ONTARIO

REPORT TO

Hon. A. Kelso Roberts, Q.C., M.P.P.
Attorney General for Ontario

of certain studies of the

JURISDICTION OF COUNTY AND DISTRICT COURTS

and Related Matters

by

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1961

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ONTARIO

DEPARTMENT OF THE ATTORNEY-GENERAL

PARLIAMENT BUILDINGS
TORONTO 2

Honourable A. Kelso Roberts , Q.C., M.P.P.,
Attorney General for Ontario

RE: COUNTY COURT STUDIES

PART I

The Assignment

A. Introduction

On the 27th day of January, 1961, you requested me to make certain studies relating to our county and district court system and report to you. Subsequently the scope of my study was extended. In view of the informality of my assignment as well as its somewhat general nature, it is appropriate that I review the circumstances that occasioned it, as well as the terms of reference as I have interpreted and pursued them.

May I first assure you that I have found the flexibility of scope of the appointment an advantage in carrying out the task assigned me. I am convinced that only the practising bar collectively could have foreseen the diversity of matters that such a study must inevitably encompass. I have commented on several occasions at meetings held throughout the province

that while at first my task appeared to be "a neat little package" it soon became apparent that the primary question was destined to necessarily involve many aspects of our court organization and practice. That will be observed throughout this report.

B. The Robinette Proposal

At the formal opening of the winter assize term of the courts held on the 9th day of January, 1961, in the Court House at Toronto, with the Honourable James C. McRuer, Chief Justice of the High Court presiding, and at which you were present in your official capacity, Mr. John J. Robinette, Q.C., the Treasurer of the Law Society of Upper Canada, made a proposal to the court. I have secured a transcript of Mr. Robinette's remarks and quote that portion which is relevant:

> "The work of your lordships' courts during the past year has been extraordinarily heavy, and it is almost miraculous that your lordships have been able to keep abreast of the growing volume of litigation in the Supreme Court of Ontario. That growing volume comes not only from the normal increase in an expanding community in normal fields of litigation, such as automobile accident cases, contract cases and the like, but it also comes from entirely new heads of jurisdiction which have developed during the past ten or fifteen years. There has, of course, been a tremendous development in important commercial litigation, which has to be expected as concurrent with the economic development of your country; but also the court has had to deal with a number of important cases relating to the judicial review of the functions of administrative tribunals, problems of labour law, and an ever-increasing number of cases involving land-use control and other legal problems arising out of activities of our vigorous municipalities.
>
> For all these reasons the work of the courts has been very heavy and will likely be heavier during 1961. There may be need for some additional judges in the High Court of Justice, but, with the greatest respect, I suggest that it is not desirable that the court indefinitely be expanded, and I suggest for the consideration of the proper

authorities that more of what is, I think, to-day the unnecessary burden on this court could be removed if the monetary jurisdiction of the county court judges in automobile accident cases at least were increased, and I can see no reason, with respect, why that should not be increased to cases involving claims up to $10,000. If this were done it would leave the members of this court more judicial time available for more important fields where the policy of the law needs elucidation, and it is at a crucial stage of development."

C. Scope of Assignments

As stated above, on the 27th day of January you requested me to proceed with a study of the proposal and of other matters arising therefrom, or of a like nature, which might enhance the administration of justice. Later on the same day you advised the members of the Attorney General's Committee on the Administration of Justice of my assignment.

I proceeded at once to consider how best to proceed with the studies and having discussed the matter further with you, you wrote me under date of February 27th as follows:

" Re County Court Jurisdiction

Further to my recent instruction to you as confirmed by my advice to the members of the Administration of Justice Committee at its last meeting, it is my intention that your study of the feasibility and desirability of increasing the County Court jurisdiction in some or all of its aspects should be done with your usual thoroughness and encompassing a scope which will have due regard to all relevant circumstances and conditions.

To accomplish a practical result your general studies must not overlook special local situations which may be regarded as representative of the type of exceptions to the rule that are inevitable. The practicability of the proposal involves also such matters as an appraisal of the present responsibilities whether judicial, quasi-judicial or administrative of the judges as well as the present

system of interchange and generally all matters going to the control of their workload. I will be interested also in any trends which you may find in the common law jurisdictions that might be of assistance to us in appraising our situation here.

Please understand that I wish your report to be fully comprehensive and to clearly state the findings and recommendations which, in your opinion, are relevant to the very important studies that are your responsibility."

I refer also to discussions had with you and Mr. Common when I was instructed to make such studies relating to the functioning of magistrates and justices of the peace as might be related to the county and district court studies or as might be suggested by these studies and seem desirable in the interests of the administration of justice. It was also inherent in the appointment that where the County Court Studies involve a study of any of the other courts or tribunals of the province my report to you should not be in any sense restricted or limited because of that fact. I have proceeded accordingly.

PART II

Carrying out the Assignment

A. The Early Stages of the Study

Shortly after my assignment I wrote to the Deputy Attorneys General of the various provinces with a view to obtaining information and advice regarding the functioning of their respective systems of secondary courts. During the early stages of study I also conferred both by correspondence and by personal interview where feasible with officials of government, of the courts and of institutions dedicated to the improvement of the courts. These included Sir George Coldstream of the Lord Chancellor's office in England; Mr. Elmer Driedger, Q.C., Deputy Minister of Justice for Canada; Mr. Glen Winters, Director of the American Judicature Society; Professor Sheldon Elliott, and Mrs. Fannie Klein, Director and Assistant Director, respectively, of the Institute of Judicial Administration; Mr. Edmund McConnell, Administrative Director of the Courts of New Jersey; Mr. William Magill, Chief of the Judicial Division, Dominion Bureau of Statistics and many officials of our own departments of government including Mr. W.B. Common, Q.C., the Deputy Attorney General; Mr. Alan A. Russell, Q.C., Co-ordinator of Justice Administration and now also Inspector of Legal Offices; Mr. Hugh H. Donald, Q.C., at that time Inspector of Legal Offices and Miss Helen L. Madge, Economist, of the Department of Economics and Federal-Provincial Relations. In addition I was assisted in making brief studies

of the court systems of the States contiguous to Ontario and the New England States by officials of the respective Attorneys General's Departments.

Much assistance was afforded me not only by correspondence and memoranda but also by a number of reports, articles and texts which were either kindly furnished to me, or to which I was helpfully referred. I found Professor R.M. Jackson's work The Machinery of Justice in England (3rd edition, 1960) of real assistance in providing an insight into the history and operation of the English system. The special research done for this study by the American Judicature Society demonstrates the trend toward increased jurisdiction in secondary court systems. The many reports of studies on various court problems made available to me by the Institute on Judicial Administration are of assistance in a study such as this. I am grateful also for other material which came to me from various sources but I must regard the work which is most helpful in analyzing both the development and the organization of the system which is under study as the two excellent articles by Her Honour Judge Helen Kinnear which were published in the Canadian Bar Review in 1954.

B. Statistics and Comparisons

It was soon after my assignment that I proceeded to examine into the value of statistics to this study. In this I was assisted by Mr. Magill, Miss Madge and Mr. Russell, all of whom are referred to above.

The principal value of statistics in such a study, it seems, would be to utilize them in making comparisons, whether among the provinces; among the counties and districts; between the Supreme Court on the one hand and the county and district courts on the other, or otherwise. It became apparent to us that because of the varying conditions including the topography of the areas involved, distances, facility of travel, density of population, industrial development, number of motor vehicles, and other factors, statistics were to be of little assistance. Indeed certain exercises done by Mr. Russell demonstrated that in comparing Toronto or York County with the rest of the province by various statistical means related strictly to the business of the courts, such a variety of results are obtainable as to convince one that to select any single such comparison as a basis for appraising general court conditions would not unlikely be quite misleading.

Since our preliminary review of statistics generally, I have been fortunate in the appointment of Mr. Lion J. Sharzer, a graduate in economics of the University of British Columbia, to assist me in this work. He is engaged, among other matters, on certain tabulations which although they are not to be regarded basically as statistical computations, do involve the use of statistics. I mention that at this point so that it will be realized that I have not overlooked the cautious use of statistics in some aspects of these studies.

C. Our Best Advisers

May I state at this point one basic conclusion at which I have arrived. It is that Ontario has reached such a stage of development in court structure, organization, administration and practice that improvements must be tailored to the particular needs of our established system. We may find inspiration, advice and help springing from research and experience elsewhere but we must copy with caution and design to our needs in the light of our own experience. Our system of courts is a good one and I am convinced that with the background benefit of advice and experience from elsewhere our best advisers are the active and interested members of the Ontario bar. I shall comment further upon their assistance when describing the progress accomplished at the meetings which were held.

D. The Series of Meetings

Having completed preliminary studies, and as a result of consultations with you, it was determined that I should proceed with a series of meetings in various parts of the province in order to facilitate the presentation of views of all interested groups and individuals, including the bench, the bar and members of the public.

Accordingly some 1800 letters were sent out over your signature to

County and district court Judges

Magistrates

County and district court clerks

Local Registrars, S.C.O.

Sheriffs

Crown Attorneys

County and District Law Associations

Senators

Members of Parliament

Members of the Legislature

Heads of Municipal Councils

Benchers of the Law Society of Upper Canada

Boards of Trade and Chambers of Commerce

Local Trades and Labour Councils

Insurance Associations

and certain others, as for instance, The Lawyers Club of Toronto. While the letters were not in all cases identical, they were generally similar in their message and I quote the text of one:

> " At the formal ceremonies marking the opening of the court term in January last, the Treasurer of the Law Society, Mr. John J. Robinette, Q.C., made a proposal to the court which in my opinion merits careful study by me as Attorney General.
>
> The Treasurer suggested that the jurisdiction of the County and District Courts in certain types of actions coming before them should be increased very substantially. In addition to relieving the High Court of some of its work-load involving motor vehicle accidents, the proposal would perhaps afford a more expeditious disposal of these actions which comprise a very large part of to-day's litigation. It is also to be observed that such a move might be regarded as a not unnatural one by reason of the inflationary trends that have in effect resulted in a reduction in the actual jurisdiction of county courts.
>
> In line with my purpose of maintaining the high standard of administration of justice in the province and improving it wherever possible, I have taken steps to have the fullest study made of this proposal and of otherwise reviewing the

jurisdiction of our courts by requesting Mr. Eric H. Silk, Q.C., the Assistant Deputy Attorney General to proceed with a comprehensive study of all matters relating thereto.

Reflection upon the nature of the proposal will indicate to you that it involves many aspects of the present organization and functioning of our county court system as well as a review of division court jurisdiction. It is also possible that some aspects of the functioning of the magistrates' courts and the work of the justices of the peace may be pertinent. It follows that the studies to be made are destined to be of considerable scope and I am anxious that the review should be fully comprehensive.

In addition to an intensive study of the instant situation in the Ontario courts including statistical and other research, the experience in the other provinces and in jurisdictions elsewhere is receiving careful attention. It is my desire, however, to obtain all the assistance that may be available by way of advice, suggestion and otherwise from those persons and groups within Ontario who are interested in the functioning of courts. To that end, I have asked Mr. Silk to arrange for a plan of meetings throughout the province so that he may meet with legal and non-legal groups as well as municipal and court officials and members of the bench and bar who wish to make representations.

I am writing you at this time so that thought may be given to these matters in anticipation of Mr. Silk's visit. You will be advised regarding his plans for meetings in your area and I will be grateful to you for any assistance you may provide in this important study.

Yours very sincerely,"

The schedule of meetings which were held was calculated to render attendance by interested persons in all parts of the province as convenient as might be reasonably feasible. Accordingly, meetings were held in all district seats except Gore Bay and Parry Sound. In these cases residents of Manitoulin and Parry Sound districts were invited to attend the Sudbury and Bracebridge meetings respectively. Several meetings in southern Ontario included groups of counties where the distances involved for those attending were not great.

Notices of the time and place of each meeting in the form of letters over my signature were also sent to the persons and groups to whom you had written. The replies to your letters as well as mine indicated generally an enthusiastic acceptance of the studies directed by you.

The first meeting was held in Kenora on May 15th and with the exception of one week in May and one week in June, when I was engaged on a special assignment for you outside of Ontario, from two to four meetings were held each week until the end of July. Resuming the series in mid-September, I concluded my sittings at Toronto on October 4th. Thirty-two of these meetings were held as follows:

Date of Meeting	Location	Area for which meeting held
Monday, May 15	Kenora	District of Kenora
Tuesday, May 16	Fort Frances	" " Rainy River
Thursday, May 18	Port Arthur	" " Thunder Bay
Monday, May 29	North Bay	" " Nipissing
Tuesday, May 30	Haileybury	" " Temiskaming
Thursday, June 1	Cochrane	" " Cochrane
Tuesday, June 6	Sudbury	Districts of Sudbury; Manitoulin
Thursday, June 8	Sault Ste. Marie	District of Algoma
Tuesday and Wednesday, June 20,21	Ottawa	County of Carleton
Thursday, June 22	Pembroke	County of Renfrew

Date of Meeting	Location	Area for which meeting held
Tuesday, June 27	Brampton	Counties of Peel; Dufferin; Halton
Wednesday, June 28	Hamilton	County of Wentworth
Wednesday, July 5	Lindsay	County of Victoria; Provisional County of Haliburton
Thursday, July 6	Peterborough	County of Peterborough
Tuesday, July 11	Kingston	Counties of Frontenac; Lennox and Addington
Wednesday, July 12	Belleville	Counties of Hastings; Prince Edward
Thursday, July 13	Cobourg	United Counties of Northumberland and Durham
Tuesday, July 18	Whitby	County of Ontario
Wednesday, July 19	Barrie	County of Simcoe
Thursday, July 20	Bracebridge	Districts of Muskoka; Parry Sound
Tuesday, July 25	Brockville	United Counties of Leeds and Grenville; County of Lanark
Wednesday, July 26	Cornwall	United Counties of Stormont, Dundas and Glengarry; Prescott and Russell
Thursday, September 14	Welland	Counties of Welland; Haldimand; Lincoln
Monday, September 18	Brantford	Counties of Brant; Oxford; Norfolk
Tuesday, September 19	Kitchener	Counties of Waterloo; Perth; Wellington
Wednesday, September 20	Walkerton	Counties of Bruce; Huron
Thursday, September 21	Owen Sound Barrie	County of Grey County of Simcoe (2nd meeting)

Date of Meeting	Location	Area for which meeting held
Tuesday, September 26	London	Counties of Middlesex; Elgin
Wednesday, September 27	Sarnia	Counties of Lambton; Kent
Thursday, September 28	Windsor	County of Essex
Tuesday and Wednesday October 3, 4	Toronto	County of York

Other meetings requested by special groups were also arranged. In all, including my meetings with the judges referred to below, some sixty sessions were held.

With a few exceptions the general pattern of the meetings might be described as similar. In writing the county and district court judges I extended an invitation, in each case, to join me at luncheon on the occasion of my visit to the county or district town where the meeting for the judge's county or district was to be held. In most cases the judge or judges joined me for luncheon and we had an opportunity for discussion. Usually the judge, or judges, did not attend the general meeting although that was not always the case.

In most instances the local bar association or its executive had thoughtfully conferred to determine what submissions should be made and these submissions were invariably of considerable assistance to me. It was customary to inform me also of other matters that had been considered by the members of the local bar association and to discuss with me frankly the pros and cons of those proposals upon which agreement had not been reached.

When I had had the advantage of having held a few meetings and sensed some common ground among the respective bars, I made a practice of discussing with each group some of the suggestions that had been made at other meetings. Throughout these discussions we exchanged views with a frankness that I felt was becoming to those members of the bar who, by their appearance at the meetings, manifested an encouraging interest in the improvement of our system of administering justice.

I am grateful also to the reeves and councillors of municipalities and to the municipal officials who attended whether to contribute or to observe, just as I appreciate the assistance offered by those members of the Senate, the House of Commons and the Legislature who found time to attend the meetings. In addition I acknowledge with gratitude the helpful advice tendered by representatives of organized labour and of various boards of trade and chambers of commerce. I have, of course, included in my reference to the assistance provided by the members of the local bar associations those benchers who attended the meetings in that capacity. The splendid co-operation afforded me by the court officials across the province who not only attended meetings and offered helpful suggestions but also provided requested information with willingness, promptness and efficiency, is a tribute to the men and women who handle the administrative work of our courts.

And I can find no more appropriate part of this report at which to express my gratitude also to the numerous other persons - judges, lawyers, officials and others located at various places, with whom I consulted and who were invariably so co-operative and helpful in providing the advice or other assistance sought.

E. Basis of Recommendations

In view of the scope and nature of this assignment, as described above, it seems desirable to inject at this point a brief explanation of the basis on which I have proceeded and the method I have followed in arriving at my recommendations.

In carrying out the assignment I found myself in a position of advantage which I regard as rather unique. Let me explain: most of those making submissions were lawyers. Not only were they, in this instance, trained in the presentation of submissions; they were also experts in the matters which were the subject of their submissions. Indeed they combined the best features of the advocate and the expert witness, whether they were of the bar or of the bench. But a factor already referred to that enhanced the advantage of my position to an even greater degree was the fact that in many cases the submissions made represented the collective views of the members of the local bar association. For these reasons I have been inclined to lean heavily on the advice proffered, particularly where something in the nature of a common pattern has emerged as the studies progressed.

And so let me tell you something of the plan I have followed in presenting my recommendations and other conclusions to you:

> Where I have found it feasible to do so, I have come to a conclusion upon the basis of the facts as I have learned them and the recommendations made to me by those who through practice and experience must be regarded as having special knowledge of the situation,

and I have made my recommendations in some detail in most of such instances.

Sometimes, however, it has not been practical to ascertain the facts in detail and to discuss the situation in its full complexity (the costs situation is an example) or it has appeared desirable to restrict my recommendation to matters of principle (procedures under The Mechanics' Lien Act is an example). In such cases I have respected the need for further and more detailed study and planning (of a nature which is not feasible in a review of this type) by one or more persons equipped to make the special studies involved.

I should perhaps observe that generally I have adhered to matters of principle rather than detail for while it is my function to respectfully advise you regarding changes in the law, the organization of the courts and procedure in the courts which in my view are desirable, it is in a number of instances impractical for me to enter upon a detailed study of the amendments to legislation that would be involved.

In all of these matters I have had high regard for the views of the members of the bar and of the bench for in their daily activities they become familiar with the needs of the public who have occasion to use our courts, and of the members of the bar who represent them. Where a strong pattern has emerged from recommendations consistently made at successive meetings and there is either no opposition or a minimum of it,

the need for the recommended revision in the interests of the administration of justice must be regarded as a compelling one, for these are the persons best qualified to advise, and I have proceeded accordingly, but not blindly, in this report.

F. Scope of Recommendations

While the assignment to make these studies is that of the Attorney General for Ontario, the foregoing observations as to its scope will indicate that it necessarily involves some matters within the sole jurisdiction of Parliament. It should be unnecessary to give assurance that I have avoided this field as far as possible while still maintaining an intelligent and constructive analysis of the situation.

It will be found, however, that certain of my proposals - a minimum, I am confident - do involve legislation or action at the Dominion level. I trust that this course will be regarded as a proper one for, in my well considered view, to have followed another would have deprived the report of a part of the value that I hope it possesses.

G. Types of Findings and Observations

In a study conducted as this one has been, with submissions from many sources, there will inevitably be a multitude of suggestions. Many of the suggestions received were directed to the main purposes of the study; a further number were so related to those purposes as to be regarded as forming a part of it; others were of doubtful relevancy, and some could not be regarded as

coming within the scope of my assignment at all.

Nevertheless in the preparation of this report to you I have borne in mind the inconvenience to and concern of all those who attended meetings in order to make submissions upon matters which they regarded as important, and I have given careful attention to all submissions made. Some of them I have dealt with by referring them to officials of this government for study and appropriate action. Others I deal with here at the risk of exceeding the limitations of the assigned field, but only where I feel that the potential importance of the proposal and a uniformity of viewpoint justify it.

PART III

Principal Recommendations

A. Comprehensive Statement

It is my purpose to make manifestly clear the contingent nature of the principal recommendations of this report for while they may be expressed with conciseness, it is my respectful opinion that under present conditions their enactment or introduction is not wholly feasible. Consequently, I must introduce the statement of these recommendations with a proviso:

> Provided a satisfactory system of interchange (see below at X) among the judges of the county and district courts is established, it is my recommendation
>
> (a) that the present monetary limits of jurisdiction of the county and district courts of $1000 and $1200 be increased to $2500 with a corresponding increase from $4000 to $10,000 where that limitation is prescribed;
>
> (b) that the judges of the county and district courts, except in Toronto and perhaps in Ottawa and London, be vested, as local judges of the Supreme Court, with jurisdiction in all interlocutory (and certain other) matters in proceedings in the Supreme Court, and
>
> (c) that consideration be given to securing such changes in the law as may be necessary to vest in the judges of the county and district courts jurisdiction to try and dispose of actions for divorce.
>
> In my respectful opinion this involves
>
> 1.) the appointment of a Chief Judge of the County and District Courts,
>
> 2.) the effecting of uniformity among the judges in the classes or types of authority and responsibilities

vested in, imposed upon or undertaken by county and district judges,

3.) basic revision of the tariffs of costs, and

4.) provision for appeals in interlocutory matters in the county and district courts, at least in their higher levels of jurisdiction.

(X I use the term "interchange" for want of a more accurate expression. The present legislation requires "rotation". Either term suggests an "exchange" of judges which although accomplishing one objective of the proposal does not encompass the important principle of utilizing available judicial services where the need exists through workload, illness or otherwise. I intend "interchange" to encompass both situations.)

B. The Position and Nature of the Office of County or District Court Judge

The recommendations as set out above are in my opinion in line with the views of a majority of those by whom representations were made and are the result of careful study and consideration on my part. I shall deal in detail with each of the matters involved but before doing so I am constrained to consider the position occupied by the county and district court judges and the nature of their appointments. This, I feel, is necessary because of the position taken by certain members of the bar, and I refer particularly to the situation and attitude which I encountered at one of the meetings.

While the predominant view among the lawyers' organizations across the province was strongly in favour of increasing the jurisdiction in the various respects referred to,

there was occasionally opposition to any substantial enlargement of authority. It was interesting to find, however, that where I enquired of those opposing increase whether the thinking would be changed were it found feasible to arrange for some interchange with judges of other counties (or districts) the reply was almost invariably that such a plan would dispense with the objection. In a few instances it was indicated that divorce jurisdiction should be left where it is in any event and once it was explained: "Divorce is easy enough to get now. It should not be made easier".

I can recall only one instance where the submission of the local bar was "No increase in the jurisdiction of the county judges even with a system of interchange". The strong and uncomprising attitude of what appeared to be the entire bar of a heavily populated county (for no other view was expressed and the meeting was well attended) was such a departure from the trend across the province, that I have given it careful study.

There is no doubt that the principal spokesman expressing this opposition were of the negligence bar; nor is it questioned that these gentlemen were sincere in their wish to retain the division of jurisdiction where it presently stands. Their full frankness in discussing the local version of the situation under study should be appreciated by those responsible for the administration of our courts. The discussion was of interest and assistance to me.

But the position taken must be studied in the light of at least two observations that were made - not once

but repeatedly; not by one spokesman but by several. I refer to the following submissions which, because of the number of different ways in which they were put to me are, I feel sure, paraphrased with reasonable accuracy:

- county judges are at the parochial level and as such are appropriate for many local functions but the trial of any matter beyond their present jurisdiction can best be conducted by a Supreme Court Judge; and

- there is no money in county court litigation.

In referring to these two rather novel submissions (in the sense that the first was not encountered elsewhere; nor was the second elsewhere put forward as a ground for maintaining the present jurisdictional limits) I offer assurance that I do not overlook the several other points made: that the High Court Judges are presently more experienced in the trial of personal injury cases; that the trial by them is conducive to a uniform damage scale across the province; that association and the discussion which is available among themselves is likely to be helpful to them, and that the appearance before them of outstanding counsel improves their calibre as judges. I did not entirely follow the submission which seemed to suggest that maintaining the county court at its present jurisdictional level is in the interests of the better training of young counsel.

The attitude toward the position of county court judges in our society is basic to the question of any increase in

jurisdiction: Should their civil and criminal trial work be regarded as of major importance in determining priorities on their available time? or, Are they to be regarded primarily as parochial officials whose many duties not having to do with the trial of civil or criminal issues, some of which are administrative or quasi-administrative, should be regarded as of at least equal importance with the trial of issues that cannot be regarded as other than minor? While the question is not one for any final determination by me, I must reach certain assumptions in the pursuit of these studies and while all that flows therefrom would be unsound if the assumption were in error, I must guide myself as best I can by all relevant circumstances.

Upon considering the governing statutes, both of Ontario and of Canada, the rules of procedure and the circumstances and conditions under which these judges perform their judicial functions, I find no difficulty in reaching the conclusion that they are established as members of a bench which is recognized as competent to try matters of considerable substance and very real importance.

Under the scheme of The County Courts Act it is recognized that in the case of most types of actions, they are competent to try issues without monetary limitation providing a party does not object. Not infrequently in the Surrogate Court amounts in issue greatly exceed those mentioned in section 19 of The County Courts Act, and by custom the judges of the county and district courts are the judges of the Surrogate Courts.

Likewise as local judges of the Supreme Court issues coming before them cannot be regarded as being invariably of a minor or inconsequential nature. Amounts at issue in mechanics' lien proceedings sometimes involve large sums of money.

Perhaps, however, the strongest indication of the high degree of confidence reposed in our county and district judges is to be found in the Criminal Code (Canada), where the Parliament of Canada has recognized the members of this bench as competent to try all but a few of the offences comprising the substantive criminal law of Canada. There are few offences over which they do not have jurisdiction and although no comparison with the English county court bench is here offered, it is to be observed that the members of that court do not exercise criminal jurisdiction. For a more detailed study of the range of judicial duties of the county and district judges of Ontario, Judge Kinnear's studies, referred to above, are helpful.

In another part of this report I deal with other functions of the county and district judges. Some of them are of an administrative or quasi-administrative nature. Some are of comparatively recent origin. Indeed it seems to have become a custom in the preparation of legislation to refer newly created responsibilities to the county and district judges. The vesting of these functions in the members of this bench cannot, in my view, be regarded as derogating from the importance of the office.

The strong indication of the important judicial position of this bench is borne out in other respects. Indeed

the whole scheme of things is such as to demonstrate that these courts have always been intended to perform in a manner comparable to the Supreme Court. Procedure is much the same, with a system of pleadings and discovery in most respects identical with the Supreme Court practice. I quote from the County Courts Act

> "29. Subject to The Judicature Act and to the rules of court, the practice and procedure of the Supreme Court apply to the county and district courts. R.S.O. 1950, c.75, s.30.
>
> 31. Every county and district court has the like power as is possessed by the Supreme Court of enforcing its judgments and orders in any part of Ontario, and may issue the like writs and process as may be issued out of the Supreme Court and they have the like force and effect as writs and process issued out of the Supreme Court. R.S.O. 1950, c.75, s.32."

Judges must be legally trained and are appointed by the same authority and under the same Act of Parliament on a full time basis with similar security of tenure of office. Trials, including accommodation, attendants, robes and trappings, availability of juries and many other matters are to all intents and purposes alike in the Supreme Court and the county and district courts.

As to the observation that the present schedule of costs in the county court is inadequate, the remedy should be sought by revision of the present scheme of costs. I have dealt with this situation elsewhere in the report because it is a matter that was raised repeatedly, although not as a reason for restricting the jurisdiction of the county and district courts.

C. Interchange of Judges

There are several reasons which render a system of interchange among the county and district court judges not only desirable but essential to the efficient administration of justice. Before enumerating those which appear to me to be of primary importance, I would observe that for this study to serve its intended purpose there is room for nothing short of frankness in this report. It would be unrealistic to deal with the subject upon the hypothesis that all judges are perfect; that all county and district court judges are highly regarded for their judicial ability by their respective bars, or that each has like qualities upon the bench. Indeed it must be recognized that being a member of the local community may be, and frequently is, regarded as a disadvantage.

I shall deal specifically with four factors:

(a) The variation in the distribution of case load and other judicial responsibilities in the different counties and districts renders necessary some provision for the better utilization of available judicial services at the county and district court level.

There appears to be only one instance in the province where substantial compliance with the present statutory requirement for interchange exists. In one or more other instances

there is an approach to compliance among some of the judges of the county court district. Nor is compliance with the present "rotation" requirements of assistance in the aspect discussed under this sub-heading. I shall deal further with the present requirements in another part of this report.

There are many instances of judges moving from their own counties and districts to assist in disposing of volumes of trial work that have accumulated because of various conditions. Sometimes the needed assistance results from a request made by the local judge; sometimes the arrangement is made by the Co-ordinator of Justice Administration. The obtaining of a judge to provide assistance, even assuming his availability so far as his own workload is concerned, is dependent upon his willingness to comply with the request of one of similar rank or of an official without judicial status. This situation is unsatisfactory and in a number of instances the bar were quite frank with me in this regard. Nor is the situation regarded as satisfactory by the judges who discussed it with me.

(b) The bar do not always have confidence in the ability of the local judge to deal with matters involving certain types of issues.

Such situations as this tend to impair the administration of justice. The parties are entitled to have the

issue tried; the interchange presently required by statute is in most areas, it seems, ignored; neither the rules of procedure nor the convenience of the parties encourage bringing actions in an adjoining county, and the costs structure discourages trial by an itinerant justice of the Supreme Court.

(c) It is but natural that since the local judge is of the local community there will be matters which he and the members of the bar will prefer to have disposed of by a judge other than himself.

It is inevitable that a judge will have social contacts with members of the bar and others. While he may dispose of matters affecting them with unimpaired impartiality it is well to observe the hackneyed but accurate adage commending the appearance of justice.

(d) Principles of religion may incline the judge as well as the parties to prefer a trial involving divorce to be tried by another judge.

Members of the bar of various religious followings dealt directly and frankly with this situation, both as it exists under present conditions and as it would be affected by implementation of the above recommendations.

In view of the important light in which the members of the bar throughout Ontario regard the vesting of divorce jurisdiction in the county and district court bench it may appear that my review of the need is unduly brief. In fact it is a matter that needs a minimum of advocacy to demonstrate its essential nature in the functioning of our system of courts. It will be observed from the above that the carrying out of such a plan in the districts is as important in most aspects, at least, as in the counties.

It is accordingly my recommendation that before implementing any of the other principal recommendations of this report provision first be made for an effective but flexible system of interchange among the county and district court judges having regard to the reasons and observations above set forth. The manner of accomplishment and other matters relating thereto are dealt with in the portion of this report that follows discussion of the other principal recommendations. (See pages 47 to 72)

D. Increase in Monetary Jurisdiction

It is to be observed that the proposal which resulted in this study involved a very substantial increase (ten-fold) in the absolute jurisdiction of the county and district courts but limited strictly to one class of tort actions. From the remarks of Mr. Robinette quoted above, it would appear that the purpose of the proposal was primarily to afford some relief to the members of the trial division of the Supreme Court from their present case load and I am given to understand by

Mr. Robinette that it was felt that such a substantial increase in this class of case was justified by reason of the settled state of the law in that field of tort. Such a view with regard to the settled state of the law appears not to be inconsistent with to-day's volume of "automobile litigation" or indeed with the high percentage of such actions that are settled short of trial. To avoid misunderstanding I would assure you that I have considered the suggestion and those relating to it in the light of their respective effects upon the overall administration of justice, including the workload of the judges at both court levels.

I would first deal with what may be termed the second aspect of the proposal: the restriction of any increase in county and district court jurisdiction to a particular class of actions in tort. To state the fact directly, I found no support for this view throughout the province. It is interesting to know that such an increase (although upon a much smaller scale) was provided for in the municipal courts of New Jersey (which correspond to our county court system) in 1953 and that four years' later a general increase of monetary jurisdiction to the same level in all types of action coming before those courts was enacted.

Those who in their submissions opposed any increase in monetary jurisdiction were, as previously indicated, the exception. Almost all of those who appeared - and many of those who wrote me but did not appear - favoured an increase in monetary jurisdiction, although the amounts proposed varied greatly. Except in the instance which is dealt with at some length above,

opposition to increase was eased by the thought of an interchange of judges or was based upon the extreme workload situation in York County. In view of the special circumstances in York County I have dealt with the situation there in a separate chapter near the conclusion of this report.

It was on more than one occasion pointed out that the $10,000 proposal would leave little work for the Supreme Court, particularly if jurisdiction in divorce is to be given to or shared with the county and district courts as was so strongly and frequently urged. The difficulty of selecting a court and avoiding penalization in costs if the $10,000 limit were chosen was referred to with concern on several occasions. Certainly there were very few who came before me supporting such an increase and I found almost invariably that those expressing support of the proposal had no strong views and were inclined to take the view that while they thought some increase was in order they had not come to an emphatic conclusion as to its exact extent.

From this you may conclude that this was a matter which was the subject of free discussion at the meetings, and that is so. Occasionally the court officials would review their files to ascertain the amounts of the respective judgments over a convenient period. Since motor vehicle cases constitute such a large volume of litigation we discussed where a logical division might lie and in that regard considered the quantum of property damage judgments against that of personal injury judgments. This was principally in seeking a solution to the difficulty of

selecting the court in which action should be brought and the practicability of selecting the appropriate court were the increase to be set at various levels.

And we discussed generally where the members of the bar in the light of their respective experiences felt the new line should be drawn, but usually premised upon a satisfactory system of interchange of judges and a revision in our costs structure. I must also advise you that the overwhelming view was that the present distinction in monetary limits as between actions in contract and other types of actions should be eliminated.

The situation varies greatly among the other common law provinces where present jurisdiction of the counterparts of our county and district courts is limited to $500 in Prince Edward Island but is ten times that amount in British Columbia in certain types of cases. Indeed a $7500 limit was tested in 1957 in the latter but in 1958 the limit was restored to $5000. Limits (with former limits shown in brackets) in the other provinces are: British Columbia $3000 in tort and contract, $5000 in equitable matters ($1000 and $2500); Alberta $1000 ($600); Saskatchewan $1200 (800); Manitoba $2000 ($800); New Brunswick $500 in tort, $1000 in other matters ($200 and $400); Nova Scotia $2500 ($1000); Prince Edward Island $500 ($150); and Newfoundland $1000 ($50 and $200). The Prince Edward Island limit dates back to 1931; that in Saskatchewan to 1940 and that in Newfoundland to 1949 (when the last revision in Ontario occurred). All others are the result of amendments since 1950. The increase in the minimum quantum involved in appeals to the Supreme Court of Canada was increased from $2000 to $10,000 in 1956.

In all the provinces the plaintiff may bring his action within the court's jurisdiction by abandoning the portion of his claim which is over the limit. Some of the provinces permit this court to try cases involving amounts beyond the prescribed limit upon consent of the parties and at least one follows the same practice as Ontario in vesting unlimited jurisdiction where no objection is taken.

To complete the provincial picture, I should explain that I was not able to compare jurisdiction of our county and district court system with any system that might be regarded as its counterpart in Quebec. There the Superior Court seems to combine in many respects the jurisdiction of our Supreme Court and our county and district courts in a manner that I, at least, have not located in any common law jurisdiction. That is not to say, however, that there are fewer systems of courts than in this province for our studies disclosed Justice Courts, Municipal Courts, Recorders' Courts and Commissioners' Courts as well as the recently abolished Circuit Court with various overlappings of jurisdiction.

Studies have also been made to determine any trend toward increased jurisdiction among the courts of corresponding level in the various states of the union. Where revision has occurred, as is the case in about a third of the states, the post-war pattern and particularly that since 1950, resembles that in Canada. I have dealt elsewhere with the situation in England where the increase has been from £100 to £400 with provision for further increase to £500 by Order-in-Council. Because of the

altered dollar value of the pound sterling since 1940 the increase in jurisdiction in England may be regarded as being in line with the trend across Canada. It is unnecessary to draw a firm conclusion that what appears to be a general trend in the three countries is attributable to the inflationary trend in money values but certainly the latter does not render the former illogical.

While these trends in other jurisdictions both within and outside of Canada are helpful in any appraisal of the situation under review, they do not constitute reason, in themselves, for an increase here. Neither, in my view, is work-load the criterion which ought to decide which courts shall try what cases. Many factors enter the consideration. The public rely upon the members of the legal profession to advise them in matters ranging from conveyancing and domestic ones to those relating to litigation, including the selection of the forum, and with the progression of time the advice of specialists becomes more common. In making this recommendation to you, I rely heavily upon the advice of what appears to me to be a substantial majority of the practising bar who represent the public in our courts.

It is accordingly my recommendation that the present monetary limits of jurisdiction of the county and district courts of $1000 and $1200 respectively be increased to $2500 with a corresponding revision of the $4000 figure to $10,000 where the former is prescribed.

E. Interlocutory and Other Powers as Local Judges S.C.O.

It was at my first meeting, and as it happened, the one most remote from Toronto, that my attention was first called to the need for some revision of the provisions that presently require many interlocutory matters to be dealt with in Toronto unless, as is rarely the case, a judge of the Supreme Court is present and available in the area. While I surmised that the very great distance separating northwestern Ontario from Osgoode Hall created a special situation that prompted the strong views there expressed, I was to find these views to be popular among the bar throughout Ontario except at points close to Ottawa and London, where weekly court is held regularly, and Toronto. There the attitude was that of indifference rather than opposition to the proposal.

Particular reference was made to the situation that arises in the case of interim injunctions and the factual impossibility in some areas of complying with the time limitations imposed by the rules, except with the consent of opposing counsel. While this might be cured by a relaxing of the time requirements in the rules, its remedy would also be found in the more comprehensive approach which in my respectful view is indicated.

A number of examples were given me at several meetings of the type of matter, usually of a reasonable degree of urgency, that must be sent to Toronto with resultant delay and expense that are more often than not difficult to justify.

Sometimes the principal requirement is an approval by the Official Guardian or the Public Trustee, followed by what amounts to the court's formal approval. (Indeed it was suggested as well that the local agents of the Official Guardian and Public Trustee should be vested with greater authority in routine-type matters and there is seemingly much to be said for that view.)

But the proposal is not restricted to such matters. It encompasses, first of all, all interlocutory matters in the Supreme Court with which a local judge may not now deal. Because of what I may be excused for referring to as the complexity of the rules which prescribe jurisdiction in these matters among judges in court, judges in chambers, masters, local judges and local masters, the precise limits of the proposal deny definition in a few words. But relying upon the good and apparently uniform judgment of the bar and their confidence in the local judges in these matters, as I do, there is no need to specify the scope of my recommendation other than to say that it encompasses all interlocutory matters in the Supreme Court. It may seem an anomaly that some of the interlocutory powers now vested in the local judges appear plainly to be of greater substance than some of those over which they do not have jurisdiction. For instance, a local judge may not strike out a jury notice (save for irregularity) whereas he is empowered to grant an "emergency" eight-day injunction which may be of more serious consequence.

Nor is the proposal restricted entirely to matters which are of a strictly interlocutory nature. Some proceedings

commenced by originating notice of motion could be dealt with by the local judge to the advantage of the parties and without off-setting disadvantages. One example which was put forward with considerable force on a number of occasions is that of an application under The Mental Incompetency Act. With the extended span of life made possible by modern medicine and surgery this Act must be resorted to with increasing frequency. Not infrequently the value of the property involved is modest. Yet under present procedures where multiple appearances before members of the judiciary at different levels are involved, the legal fees are, of necessity, substantial. I was advised on several occasions that the principal parts of the proceeding presently take place before the local judge (or the Master). Be assured that I am not unmindful of the need for caution in revising powers or procedures in such an important matter as this but I have been repeatedly assured by members of the bar experienced in this work that no impairment of justice would result from the elimination of the two appearances that must be made before a justice of the Supreme Court. Nor was any opposition voiced on any of the occasions when the proposal was discussed. Rather it was invariably received with enthusiastic approval.

Other instances where it would seem that only advantage could result from the transfer of powers to the local judge include applications under The Settled Estates Act, some of the procedures related to the sale and purchase of land and perhaps applications under Rule 600. The Conveyancing

and Law of Property Act (sec. 62) and The Married Womens' Property Act (sec. 12) presently provide interesting examples of optional jurisdiction being given to judges of the Supreme Court and of the county and district courts. In these cases the powers are given to the latter in their principal capacity.

There are aspects of the matter warranting the attention of experts on procedure before any general transfer of powers is effected. For instance a clarification of jurisdiction as between the judge where the writ was issued and the judge where the action is to be tried is desirable as is also a determination of where an originating motion should be set down. And it would seem that if there is to be a general vesting in the local judges of interlocutory jurisdiction the field must be scrutinized for logical exceptions as, for instance, appeals from masters.

I regard this proposal in both of its aspects as of importance because of the greater convenience and the resultant saving in costs that it will effect to those members of the public who have occasion to use the courts. As one lawyer in Pembroke expressed it "The lawyers in Toronto with the court of appeal and the central library at their front doors and those in Ottawa with weekly court held regularly on Saturday mornings have a tremendous advantage over us", and he pointed out that an interlocutory motion in the Supreme Court involves either his travelling to Ottawa or Toronto or retaining counsel there with a resultant increase in expenses to the client in either event.

Another lawyer referred to the "typical case" of a mentally incompetent person whose only asset is a $1500 bank account which means that the normal fee of $400 to $500 for a mental incompetency application encourages attempts to circumvent the law.

It is accordingly my recommendation that the local judges of the Supreme Court be vested with authority to hear and dispose of all interlocutory matters and certain matters commenced by originating notice of motion of the type referred to above, subject only to such restriction as may be indicated in Ottawa and London by reason of the holding of weekly court in those centres.

F. Divorce Actions

Because legislative jurisdiction in this field is vested in the Parliament of Canada my recommendation is somewhat different in form than in the case of the other principal recommendations. I have already explained the position I have been constrained to take with regard to matters falling within Dominion jurisdiction. In this particular matter the demands for a vesting of jurisdiction in some degree in the county and district judges are such that to deal with the matter other than I have done here would be to deprive the report of an accurate portrayal of the trial court situation and of a suggested solution which appears to be in popular demand by the bar.

For your convenience I quote the Divorce Act (Ontario) as passed by the Parliament of Canada in 1930:

> "1. This Act may be cited as the Divorce Act (Ontario) 1930, c.14, s.3.
>
> 2. The law of England as to the dissolution of marriage and as to the annulment of marriage, as that law existed on the 15th day of July, 1870, in so far as it can be made to apply in the Province of Ontario, and in so far as it has not been repealed, as to the Province, by any Act of the Parliament of the United Kingdom or by any Act of the Parliament of Canada or by this Act, and as altered, varied, modified or affected, as to the Province, by any such Act, is in force in the Province of Ontario. 1930, c.14, s.1.
>
> 3. The Supreme Court of Ontario has jurisdiction for all purposes of this Act. 1930, c.14, s.2."

Whether or not the concluding section would permit the vesting of jurisdiction in the county and district judges as local judges of the Supreme Court I express no opinion. In view of the specific nature of that provision I have anticipated that no action with respect to this recommendation would be taken without consultation with the authorities at Ottawa and I have proceeded with my observations accordingly.

It was very early in the series of meetings that the first formal representations urging relief against the inconvenience and not infrequently excessive expense that is encountered by a plaintiff in bringing his divorce action to trial, were made. The proposal, simply stated, was to vest the necessary authority in the county and district court judges. Nor was this to be an isolated instance of such a view for similar submissions

were made throughout the province. At those meetings where the proposal was not put forward, I found, upon inquiry, that most of those present favoured some such reform.

It is unnecessary to comment upon the volume of work, from the point of view of actions brought and trials held, that is involved. The brief nature of most trials is also well known. The feature that perhaps requires some short elaboration is the matter of the inconvenience occasioned the plaintiff. (I mention only the plaintiff here for the great majority of these actions are undefended.) The inconvenience to which I refer may occasion burdensome expenses which the plaintiff is inclined to feel should be avoidable. Let me explain by example: a judge of the Supreme Court is assigned to a county or district town for a week or two weeks; as the plaintiff and his (or her) witnesses have travelled some miles to the place of trial they must have food and lodging. As it happens, there is substantial criminal work which has customary priority, to be attended to. Most of the Supreme Court judges are anxious to accommodate the litigants and lawyers. The fault is not theirs. But the circumstances of their work render it at least uncertain as to when the divorce action may be heard and disposed of, although its hearing will occupy but a few minutes of the court's time. Meantime the expense of bringing the witnesses to town increases daily by the amount of their accommodation and meals, as well perhaps, as by reimbursing them for loss of wages. To vest jurisdiction in the county judge would eliminate much of the inconvenience and expense that is presently unavoidable.

While the basic principle involved in the proposal is quite simple, several matters require review:

(i) Would the county or district court judge try the action as such or as local judge of the High Court?

(ii) Would the county and district court judges have exclusive authority in these matters or would the jurisdiction be shared with the Supreme Court judges?

(iii) Would the county or district court judge have jurisdiction only in uncontested cases?

(iv) Would there be provision for bringing the matter on before a Supreme Court judge where the plea for divorce is joined with a monetary claim for an amount normally beyond the county and district court limit?

Let me comment upon these matters in order:

(i) To have a local judge of the Supreme Court conduct trial work is to introduce a new plan of trials to our present system of trying actions. It seems desirable to avoid the introduction of any feature that would complicate an understanding of our system of jurisprudence unless that feature affords what is to be regarded generally as improvement. Those lawyers who favoured trial by a county or district court judge seemed to

find no benefit in having them act in such matters other than in what may be termed their principal capacity. Those who were reluctant to have such a change introduced did not appear to regard trial by a county or district judge in his capacity as a local judge S.C.O. as rendering the proposal less objectionable. While I favour what appears to me to be desirable because it is less inclined to complexities and seems to offer the same advantages as would derive from trial by local judges of the Supreme Court, I give you a brief statement of the situation in England from Professor Jackson's book referred to above (p. 52):

> "The great congestion of divorce work led to the appointment in June 1946 of a Committee under the Chairmanship of Mr. Justice (now Lord) Denning.
>
> . . . The Committee found that divorce as part of the ordinary Assize system had been a failure. The King's Bench Division judges had not had enough time, and trial by Divorce Division judges on circuit had been a success for the provinces at the expense of the London lists. It was recommended that divorce should stay in the High Court, but that judicial strength should be found by the appointment of Commissioners, and that the persons to be appointed Commissioners should be mainly (but not exclusively) County Court judges. The Commissioners should sit at selected provincial towns and in London, with all the jurisdiction of a High Court judge in divorce and matrimonial cases. In all respects, including robes, form of address and payment, they should be in a position of a High Court judge. These recommendations were carried out. As regards London, the arrears were soon cleared off, and the judges of the Probate Divorce and Admiralty Division can keep abreast of the current work. In the provinces the system of Commissioners now has some appearance of permanency. There are forty-two 'divorce towns' at which Commissioners sit, taking both defended and undefended cases. In 1958, 8,176 matrimonial causes were heard in London and 16,268 outside London, of which 15,678 were heard by Commissioners and only 590 were tried at Assizes. . . . "

Before leaving this aspect of the matter, I would make two observations with regard to the general situation in England which tend to differentiate it from the Ontario system: Even since the major reforms of 1873 in their system of courts, there is a complexity in the organization and functioning of the High Court which is unknown in Ontario. (See Professor Jackson's book commencing at page 30). Secondly, the County Courts of England would seem to be restricted in jurisdiction to an extent that denies accurate comparisons of the respective positions occupied by the county courts of England and the county courts here. Speaking generally and with the available material it would seem that up to 1939 the jurisdictional limit of the English county courts was £100 and that by the most recent revision in 1955 the jurisdictional limit was set at £400 with authority to increase it by Order in Council to £500 although jurisdiction in certain types of proceedings (Admiralty; Bankruptcy) exceeds those amounts. Certainly the overall scope of jurisdiction of the county court judges in England does not approximate that of the Ontario judges.

If jurisdiction is to be given to the county court bench it is logical that the judges act in their principal capacity. That appears also to be less confusing. Nor does there appear to be advantage in another course, subject only to the matter of legislative jurisdiction discussed above.

(ii) Commenting upon the second of the above items of inquiry, I see no reason why the jurisdiction proposed to be given to the county and district court judges should be concurrent with jurisdiction in the judges of the Supreme Court. According to my recollection wherever this inquiry was made it was prompted by concern regarding the special views of the local judge and assurances were usually given me that there would be no necessity for concurrent jurisdiction under a system of interchange of judges.

(iii) The confidence expressed by the members of the bar regarding the competence of the county and district court judges to determine the issues in matrimonial causes (I have used the term 'divorce' for convenience, if inaccurately) is consistent with the view that all matrimonial causes actions are of equal importance and that failure to defend does not render the court's sanction of less importance. Notwithstanding other views recently expressed by some members of the bar this must still be regarded as the official attitude of the courts. It is but consistent then that if jurisdiction is to be given county and district court judges in these matters, the authority to act should not be conditional upon whether or not the defendants tacitly consent by non-appearance.

(iv) The final consideration goes to whether the power to try an action for divorce should be affected by the inclusion of a monetary claim. (I refer to claims for alimony and maintenance; not such special claims as alienation of affection and criminal conversation). There appear to be at least two approaches to the question both of which provide a negative answer: the first, -

that a judicial officer who is regarded as competent to dissolve a marriage must be regarded as being equally able to deal with money claims related to the principal plea; the second, - that this is to be regarded as a special power not unlike the special powers of a county or district court judge in surrogate and mechanics' lien matters where the restrictions of authority prescribed by the County Courts Act do not apply.

It is accordingly my recommendation that consideration be given to securing such changes in the law as may be necessary to vest in the county and district court judges jurisdiction to try and dispose of matrimonial causes.

G. The Manner of Accomplishing a System of Interchange

(1) The Present Situation

I felt it better to discuss the major respects in which I propose to you an extension of the jurisdiction of the county and district courts before considering those matters that demand careful study in a determination of how the important objective of the regular interchange and other movement of judges can be accomplished best, or indeed, at all.

The situation must be approached realistically with an appreciation that in general each of the county and district courts is functioning with an insular independence which has no regard for their collective co-ordination or for the functioning of these courts as a system. This statement does not deny certain movements of judges from one county or district to another but the comprehensive co-ordination of the system is not present. That these courts are intended by the legislature to be intergrated in their functioning is manifest in those provisions of The County Judges Act presently requiring rotation although it should also be observed that failure to comply with these requirements is perhaps attributable in part to the nature of the legislation. Further, and as already observed, a simple rotation principle falls short of accomplishing all that the system has to offer.

While I do not propose to analyze the present provisions in detail and compare them with what to me might seem a more workable plan, it is well to look for a moment at their current text, and review very briefly their origin and development.

They appear as section 15 to 20 of The County Judges Act:

15.-(1) The Lieutenant Governor in Council may order that a county or two or more counties shall form a county court district for the purposes of this Act or that a provisional judicial district or two or more provisional judicial districts shall form a district court district for the purposes of this Act.

(2) When a district court district is formed, sections 16 to 22 apply mutatis mutandis.

16. After the erection of a court district, the several courts shall be held by the judges, including the junior judges in the district, in rotation so far as is practicable in view of the respective general length of service and strength of the other judges, and the special duties assigned to junior judges as well as other offices, if any, held by any of the judges, and all other circumstances.

17.-(1) The judges in each court district shall meet together at least once in every year, and the judges present, or a majority of them, shall arrange and appoint which of the courts in the district will be held by each of the judges of the district throughout the ensuing year, and what other judicial work each will discharge throughout the year.

(2) The judge in a court district who, in point of time, is senior in appointment to office shall convene the meetings referred to in this section, and, unless all the judges present at any such meeting unanimously agree upon a different mode of dividing the work, it shall be divided strictly in conformity with section 16, and no judge, except by reason of illness or other unavoidable cause, shall be excused from performing the judicial work assigned to him at any such meeting.

18. Every judge to whom duty is assigned at such meeting shall perform the duty so assigned to him, and if he is by reason of illness or other cause, unable to perform it, he shall so far as possible arrange to have it performed by another person competent by law in that behalf.

19. Where by reason of the absence or illness of a judge or from any other cause it is impossible for the

> arrangements made at such meeting to be carried out with respect to any duty belonging to a judge, the judges of the district shall see that the deficiency is supplied by some other person competent by law in that behalf, and shall forthwith communicate what they do therein to the Provincial Secretary.
>
> 20. A judge may exercise and perform in any part of his court district any power or duty that he may exercise or perform in the county or district for which he was appointed.

The principle seems to have been first introduced in 1919 (1919 ch.26, sec.4). Soon after provision was made for permitting one county to constitute a county court district (1921, ch.37, sec.4). In 1935 provision was made for a senior judge for each county court district and an attempt was made to fortify the mandatory provision with even greater rigidity (1935 ch.14, sec.4). In 1941 some of the courts covered by the provisions were removed from the scope of the rotation provisions while others were substituted in their place (1941 ch.17, sec.1).

I need not discuss the wartime suspension of the system (1943 ch.28, sec.10 and Ontario Gazette 1943 No. 23) or its revival which seems to have followed the deletion of the proclamation requirements from the authorizing section (1946 ch.89, sec.12). In 1955 the system was extended to the provisional judicial districts (1955 ch.12, sec.4).

In the Revised Statutes of Ontario, 1960 the principal operative section appears in a shorter form (R.S.O. 1960, ch.77, sec.16):

> "16. After the erection of a court district, the several courts shall be held by the judges, including the junior judges in the district, in rotation so far as is practicable in view of the respective general length of service and strength of the other judges, and the special duties assigned to junior judges as well as other offices, if any, held by any of the judges, and all other circumstances. R.S.O. 1950, c.76, s.21, amended."

The enumeration of the courts covered by the predecessor section is replaced by the words "the several courts". It appears that the change was made by the Commissioners who revised the statutes and although one may wonder whether such an alteration was contemplated by the authorizing legislation (1959, ch. 94) presumably the change will, in any event, be effective by virtue of the usual confirming Act. As to the effect of the new wording I do not venture an opinion. Nor do I express a view as to what courts should be included in any plan of interchange. Apparently over the years opinions have differed in this regard and it is conceivable that the desirable scope of any plan that may be devised will depend upon the views of whoever must shoulder responsibility for the success of the plan.

I deal elsewhere with the need for disposing of the non-jury civil list at the regular sittings rather than by special appointments. I shall make two other observations: It would seem that the movement of judges within the county court district has in some instances met with disfavour because of the failure to arrange for a judge of the county court district to be available in chambers at least one day a week. Care should be taken to ensure at least this minimum accommodation for the bar and the

public. This is of dual additional importance if the monetary jurisdiction of the county court is increased and the local judges of the Supreme Court are given additional interlocutory powers as recommended above. The thought expressed that it is not feasible to have chambers work performed by "outside judges" because of adjournments involved is not borne out by the practice in weekly court where the judge changes weekly.

It may be helpful to the detailed planning of a scheme of interchange to suggest the desirability of ensuring that all judges and junior judges of each county or district court district are vested on a district wide basis with the various ancillary and other authorities usually associated with a county or district court judge. Indeed there seems no reason why such appointments, e.g. local judge S.C.O., surrogate judge, local master S.C.O., should not in each case be province wide. I mention the matter here because while most of the powers appear to be covered by existing legislation the system of appointing local masters is such that the situation should not be overlooked in the overall scheme. Incidentally a suggestion made in one centre which proposed the appointment of local masters from outside the bench met with strong disfavour. The view that prevailed there would have the judges appointed to the post and it was felt better to appoint an additional junior judge for the county or district court district than to go beyond that bench.

(2) A Chief Judge

Reasons for the widespread failure to comply with the statutory requirements quoted above, which were suggested by some of the judges who discussed the situation with me included the view that the rigidity of the requirements render compliance impractical. They were frank also in expressing the thought that such a means of designating the judge who is responsible for leadership in the scheme cannot be expected to accomplish the result sought with any degree of consistency across the province.

Under the first of the above criticisms it was suggested that compliance with the provisions would result in some of the judges driving long distances during the winter period whereas a workable provision must afford flexibility of arrangement in such matters. Perhaps, also a certain lack of clarity or specific expression has contributed to the substantial breakdown in their observance. Indeed their mandatory tenor combined with a lack of any supervisory arrangement (apart from the requirement that an annual meeting shall be called by "The judge . . . who, in point of time, is senior in appointment to office . . . ") may have caused the provisions to be regarded as unrealistic which together with the seeming need for greater clarity is not conducive to compliance.

With respect to the criticism going to the method of selecting a senior judge, one of our judges who is now approaching retirement and who has had many years experience on the bench proposed a system of annual election of a senior judge

by the judges of the county court district. This is the system followed in the Superior Court of Los Angeles where the 102 judge court (shortly to be increased to 120) is regarded as something of a model in its efficient manner of handling a very large volume of work. I had the privilege of conferring with one of the senior members of that bench who also occupies presidental and chairmanship positions in organizations devoted to the improvement of judicial matters on a national basis. Referring to their system of electing the presiding judge of the court he said "We elect him. We have respect for him, and we'll take the guff." He thought that the situation would be different if the presiding judge were appointed or otherwise selected.

Having regard to our established practices and concepts, however, it would seem doubtful that a system of election, even in a matter of this kind where the electors are the other judges, would be found acceptable here. It is also to be observed that such a plan, while calculated to render effective a system of interchange within the county court district, (and that must be regarded as the primary objective) would lack provision for any wider co-ordination which, while being of secondary importance, would be a desirable feature. Expressing as I do my respect for the views of those who favour an elective system at the county court district level, I must state my view that I cannot feel assurance that this would achieve results that would be a substantial improvement over the present situation. I consider that view to be confirmed by the fact that departure from the rotation requirements is presently substantial rather than exceptional.

I regard the most important factor standing in the way of a successfully executed plan of interchange as being the failure of existing legislation to repose in a senior member of the judiciary appropriate authority and responsibility for co-ordinating the functioning of our system of secondary courts. Indeed it would be difficult to comprehend how a court system comprising seventy judges and operating in 48 judicial areas spread over more than 400,000 square miles could be expected to function with an efficient utilization of available judicial services without provisions for central co-ordination at the judicial level.

It is not illogical to turn to the English precedent, where we find what seems to constitute a co-ordination of the courts at all levels vested in the Lord Chancellor. Accurate comparison with the situation in Ontario is not easy, having regard both to the division of legislative authority under our system of government as well as to the dual, or even multiple, nature of the office of Lord Chancellor, for he is at the same time a member of the judiciary and of the Cabinet. Nevertheless the comparison is adequate to demonstrate the provision for co-ordinating the work and functioning of the county court bench.

I might be criticized by students of court administration if I did not refer here to the New Jersey plan which is sometimes regarded as a desirable precedent for the modelling of court systems . It would be disputed by no one that the system is the result of the efforts of the late

Chief Justice Arthur Vanderbilt and was accomplished by nothing short of amendment of the State's constitution. The salient feature so far as our interests here are concerned is the vesting in the Chief Justice of the state of general administrative authority over all state courts. In that regard there is a similarity to the situation in England.

I would respectfully suggest that there is a distinction to be drawn between each of those jurisdictions on the one hand, and Ontario on the other, which distinction favours the establishment of the separate office of chief judge of the county and district courts rather than the vesting of such office in, for instance, one of the Chief Justices, as is the case in New Jersey. I refer particularly to the vast area of the province with its variation of conditions and diversity of problems which are perhaps more likely to occur or at least more demanding of attention at the county and district court level. The area of each of the other jurisdictions mentioned is but a fraction of that of Ontario.

The personal experience which I gained during the course of these studies has impressed upon me the importance of visiting each of the counties and districts if an accurate knowledge of conditions and a comprehension of problems is to be gained. I learned at first hand of the special and different problems of bench and bar from those of the vast reaches of the sparsely settled Kenora district to those of Toronto and York County,

where a quarter of the province's population reside. It was brought home to me everywhere that each judicial division of the province has problems, not great problems but problems which are related to the administration of justice; problems which are usually not capable of solution locally;problems which genuinely concern the members of the bench and of the bar and which they wish to discuss with someone in authority. These are matters which warrant and merit the concern of those responsible for the administration of our county and district court system. In my view it is such circumstances that indicate the desirability of establishing the office of Chief Judge of the County and District Courts, whose responsibility would be restricted to that system of courts; who would have the opportunity for regular visits to all areas of the province, to consult with the judges and occasionally to preside in the courts of the various counties and districts; and who would by these means become familiar with the respective characteristics and requirements of this important system of courts.

Under this proposal it would not be my intention to abandon our system of county and district court districts. Such a plan is, in my view, essential to my proposal in connection with this decentralized court system, although I am convinced that a revision of the present arrangement of the districts would offer advantages. Shortly stated I do not know why the number of districts was reduced a few years ago or what consideration was given in the regrouping either to the workload of the respective judges in each district or to the mileage involved. In the arrangement of county court districts attention should be paid primarily to two factors:

(a) the inclusion in each district of both "industrial counties" where the workload may be expected to be heavy and "agricultural counties" the judges of which should be available to assist in the busier court areas, and

(b) a grouping that will not require the judges to travel excessive distances.

It is not inappropriate to discuss another feature related to the appointment of additional judges at this point. It is another of those matters that affects both provincial and dominion jurisdiction but is germane to the subject matter here under review. My respectful and considered opinion is that in considering further appointments to the county and district court bench the need should be determined upon the basis of the establishment and need in the county or district court district rather than that of any particular county or district. Read with other parts of this report I do not believe that principle requires elaboration.

Under the proposal the Chief Judge would be responsible for arranging and presiding at the meetings of the judges in the various county and district court districts. This would afford him an opportunity of co-ordinating the work not only within each county or district court district but upon an even broader scale where circumstances might require.

The furnishing to the chief judge at regular intervals of all relevant current figures relating to case load and like

matters in all county and district courts is essential to a proper functioning of the office. In recent years a practice approximating that has been instituted by Mr. Russell so that although a central study of court conditions across the province by this method is not new, its intended purpose would be more effectively served under the proposed system. I mention this to demonstrate the need for appropriate staff for study and administrative purposes in the office of the chief judge. While it need not be large - an establishment of perhaps two persons should suffice - its key member must be chosen with care.

Finally it is to be observed that the authority to be vested in such an official as the chief judge, both by statute and under the rules requires the fullest consideration, for while it must be ample for its purpose it ought not to be excessive. But there is no dearth of precedent in this regard. The English County Courts Act and the provisions of The Judicature Act governing the position of the Chief Justice of the High Court of Justice will likely provide the assistance that is required.

(3) Uniformity of Judges' Responsibilities:

In carrying out such a system of interchange, second only in importance to the principle of supervision and co-ordination discussed above is, in my respectful opinion, the principle of all judges having uniform responsibilities. Otherwise the difficulties presenting themselves in a fair apportionment of the workload seem destined to destroy the system.

The unavoidable variation of circumstances in each county and district occasioned by such matters as area, transportation facilities, population, industry and other factors that affect not only the volume of work but the facility of handling it cannot but present practical difficulties when the judges sit around the table to plan their sittings for the year or other future period. But these are circumstances of nature and by no means insurmountable in the arrangement of sittings. However, when there is added to this the complications that must arise where certain of the judges involved have additional responsibilities imposed upon them or have accepted additional responsibilities it seems likely that the system of interchange will meet a fatal challenge.

Juvenile and Family Courts

Included in these matters are the practice of appointing a county or district court judge as judge of the juvenile and family court in some instances but not in others. This is inclined to impose very real demands on the time of the judge and I have included a proposal relative thereto in another part of this report. (See Part VI, Heading C) Lest I give the impression of passing over the matter lightly by such a short reference to the practice here, I would assure you that I regard the discontinuance of this practice as one of the essentials to a successful system of interchange.

Police Commissions

I would refer next to the matter of appointing some judges to Boards of Commissioners of Police. As the statute

dictates the practice I do so with what I hope will be regarded as a becoming respect for legislative policy but as it is a function that tends to unbalance the responsibilities of the various county and district court judges I must not omit appropriate and direct comment.

At one time the statutes required both a county or district court judge and a magistrate to be included in the personnel of every police commission. The magistrate requirement was dropped some years ago without, apparently, any ill effects on the functioning of these boards. In the interests of uniform responsibilities and facilitation of an equitable distribution of the judicial workload I respectfully suggest to you that similar relief to the county and district judges warrants consideration.

While you may feel that good reasons exist for having the local judge, who has been described as the only person in the community who is completely independant of political and other pressures, sit upon the commission as Chairman, nevertheless such position must be regarded as strictly secondary to his judicial function as performed either within his own county or in the other counties where he discharges his judicial duties. Were it to be otherwise, this administrative function would interfere with the rotation or interchange system which I regard as so important to the carrying out of the recommendations in this report.

Apart from the demands upon the time of the judges there is a further observation and one which is relevant to this

report as it relates to the feasibility of enlarging county and district court jurisdiction: It is a tribute to the press that traditionally, through respect for the courts, criticism of our judges in their performance of the judicial function is avoided. This same immunity does not, however, extend to members of the bench while acting extra-judicially as for instance as a member of an administrative board. And where criticism is thus levelled, it does not in the public eye restrict itself to the extra-judicial capacity. The result is that neither the dignity of, nor the respect for, the courts is enhanced where a judicial figure is the subject or one of the subjects of such criticism. This observation is included here in confirmation of the view that in the interests of the discharge of greater judicial responsibilities it is desirable that the county and district court judges be relieved of those functions which are outside the judicial sphere.

Labour Arbitration (and Conciliation) Work

In this branch of the study my greatest concern has been the performance of arbitration and other work of this type by certain county and district court judges. It is not provided for by any statute of which I am aware and certainly I have sought enlightenment. It seems clear that it is outside the regular judicial function. It is not a practice that is regarded as essentially for the judiciary in other jurisdictions (The English County Courts Act prohibits a judge from acting as an arbitrator or referee for any remuneration to himself.) and I am able to state with certainty that, apart from its interference with the performance

of judicial functions, its effect is being felt adversely throughout the county court bench. It is not unnatural that those members of the bench who are not chosen for this work with its financial compensation which is in addition to the regular remuneration for judicial services were not disinclined to express themselves accordingly at the meetings I had with them. It must be recognized that for some of the judges of a court to be performing what can only be regarded as "outside" work for which special remuneration is paid is to create a situation within the court which is to be avoided, judges being no less human because of their appointment to the bench. Such a situation is not compatible with the efficient functioning of this system of courts.

Discussions had with both judges and lawyers established beyond doubt that the amount of time presently devoted by a number of the judges to such matters as arbitrations, and in some cases conciliations, in connection with labour disputes seriously challenges their availability for judicial duties. Certain members of the bench who have been accepting this work removed any doubt as to the very considerable amount of their time that they are devoting to it. There was frankness regarding the small amount of time that is generally required in some of our less industrial counties for the discharge of judicial responsibilities within the county just as there was frankness in admitting the attractiveness of the enhancement of income involved in the work. That some of the judges regard the additional income as essential to their economy is not an overstatement.

While it would in most circumstances be regarded as unbecoming for one in my position to comment upon the adequacy of the provisions for the remuneration and pension benefits for county and district court judges, and it is not my intention to express any personal opinion, I feel that I would be improperly omitting a matter which is quite germane to the situation under study were I to avoid reference to the fact that across Ontario the members of the bar expressed themselves uniformly as regarding present salary arrangements to be quite inadequate. Those members of the bench who as occasion arose expressed views on the subject reflected a similar attitude but with concern also extending to pension arrangements. In addition it was observed that the work of the county and district court judges in Ontario is more onerous than that of their counterparts in a number of the other provinces.

Turning again briefly to the all important matter of interference with the judicial function, more than one judge told me of the difficulty of obtaining assistance in times of need from judges of other counties or districts who referred to the time demands occasioned by their arbitration work. It was made clear by the bar that this extra-judicial work is interfering with the availability of some judges within the county or district, just as members of the bench made it clear that the same circumstances interfere with the availability of some of the judges in other parts of the county or district court district.

With the assistance of the Deputy Minister of Justice I have reviewed the situation across Canada and the information we

have obtained with the co-operation of the various deputy attorneys-general covering all but one of the provinces may be concisely stated as follows: The use of judges in labour arbitrations and conciliations at the instance of private parties is rare, if indeed the practice exists at all. Certainly it is unknown in most of the provinces.

Reliable authorities in both England and the United States assure me that there is no parallel to the Ontario situation in this regard known to them in either country. Indeed my inquiries regarding the situation in these other jurisdictions have brought forth expressions of surprise that such a condition would maintain here.

Let us then examine the situation to determine how the Ontario practice has developed and how such matters are handled elsewhere. I would give you first two extracts from a recent letter from Mr. Joseph S. Murphy, Vice-President, American Arbitration Association, which was in reply to an enquiry from my office:

> " The Association was primarily organized in connection with commercial arbitration, and still considers it as one of its major services. The accident of history of labor-management relations in the United States has brought it about that more than two-thirds of the Association's case activity is in labor-management cases. In this respect, the Association is by far the largest arbitration agency in the United States, appointing more than twice the number of arbitrators than the Federal Mediation and Conciliation Service."

> " A breakdown of the occupations from which arbitrators come is as follows:

Vocation	Percentage of Total Cases
Educator	41.8
Practicing Attorney	34.2
Professional Arbitrator	14.4
Consultant	5.7
Industrial Engineer	1.1
Labor-Relations Executive	1.2
Clergyman	.5
Miscellaneous	1.1

(From an AAA survey published in 1958)

I am unable to give you a breakdown for the approximately 3500 cases that the Association administered in 1960. I would say, however, that the pattern remains approximately the same, with two minor changes. There is an increase in the number of professional arbitrators, and at the same time there is a slight increase in the service of attorneys. A good portion of the professional arbitrators are also attorneys.

Since you have been interested in the activity of the judiciary in this field, I should note that the statistics show that, generally speaking, judges do not serve as labor arbitrators. In some states, it would appear clear that they are not allowed by statute to participate in outside compensated activities, such as labour arbitration. In other states, we occasionally have had instances of judges serving as arbitrators. This service has been very infrequent, and appears in later years to be disappearing. During the World War II days and shortly thereafter, judges in Pennsylvania, Ohio and Indiana served infrequently, but these same judges have not served at all recently in the Association's tribunals. Judges who did serve usually came from a court of common pleas, a municipal court, or juvenile court. The total amount of service in any given year would be certainly less than one-half of one per cent."

At one of the northern meetings a representative of labour complained that other work of the judges is interfering with their ability to handle labour matters. He was referring to arbitrations and perhaps also conciliations. The discussion that followed is interesting and helpful, for the spokesman is highly regarded in the labour field and was obviously familiar with the situation involved.

He pointed out first that it is in many cases "management" that requires a "judge clause" in union contracts. But he was frank to say that if the judges were not available he would be at a loss to select a person in whom labour would have confidence. This, he assured me was not because such persons do not exist outside the judiciary. It is because such persons are not known, principally by reason of the fact that the parties to labour disputes are in the habit of selecting judges.

He also told us of having obtained personnel in two instances for this work through the American Arbitration Association and assured us that on these occasions when teaching personnel from certain Ontario universities had acted in lieu of judges, the work was performed in an entirely satisfactory manner and good results achieved.

With one noteworthy exception, I found no one adopting an uncompromising position against departure from the present participation in labour arbitration work by the judges. Wherever the situation was discussed, as occurred frequently, the strong feeling emerging favoured such discontinuance and, as may be surmised from some of the observations above, views strongly disapproving current practices were expressed in various centres.

It is with the exception mentioned above that I would deal here, for the viewpoint is that of an official of one of our boards of trade who is recognized in the field of labour-management relationship and while those presenting the submissions of the group with which

he is associated took a more compromising attitude, I regard it as important to deal especially with the views expressed, because they are those of an expert in the field and they appear to marshal all of the arguments that run contra to the proposal. He was kind enough to reduce his thoughts to writing in some detail for which I am grateful.

The first point made is the very considerable importance to management in both financial impact and other involvements that arbitrations may have. Secondly, the need for chairmen of boards who are skilled and experienced in the judicial interpretation of the law of contracts and agreements generally is stressed. Thirdly, it is pointed out that under The Labour Relations Act (Ontario) arbitration of disputes under collective agreements is compulsory and a decision is subject to proceedings for enforcement in the Supreme Court. It is further noted that The Arbitration Act "a procedural measure which has been developed to rectify defects in arbitration proceedings and in the enforcement of arbitration awards under the old Common Law" does not apply to arbitrations under collective bargaining agreements which "means that . . . there is not available such necessary provisions as are found in the following sections of that Act:

"s.7 - Staying legal proceedings taken after submission.

s.9(b) - The arbitrator's or umpire's power to state an award in the form of a special case for the opinion of the Court.

s.9(c) - The arbitrator's or umpire's power to correct clerical mistakes or error arising from accidental slips or omissions.

s.10 - Enlarging time for making an award.

s.11(1) - Remitting awards for reconsideration of the arbitrators or umpire.

s.26 - Provision for a Court directing stated cases for the opinion of the Court on questions of law."

The above quoted portion is followed by a reference to the work of the judges in connection with arbitrations and concludes with the following sentence - "There is a genuine apprehension, however, that if the services of the county court judges, who have been found gifted for this type of work, be withdrawn and inexperienced laymen start taking the chairmanship of these Boards, a real area of trouble would be opened up which would probably lead to a very sharp and unfortunate increase in certiorari proceedings which would not be of advantage to either side." (The underlining is mine.)

My analysis of the submissions particularly when read with the sentence last quoted led me to believe that the appointment of lawyers as chairmen had not been considered, for their appointment seemed to answer the first three objections and the inapplicability of The Arbitration Act would appear to be no more objectionable with a lawyer presiding than with a judge occupying the post. The representatives of the Board in question who appeared at one of the public meetings which I held and presented its submissions seemed to agree with me but promised further advice.

I am grateful for a memorandum which contains the advice promised. Referring to the facts that a highly developed and specialized practice has grown up in the labour relations field

in connection with collective agreements and operations under them and "Also, there are still important unresolved and contentious issues in the area."; that complusion may bear upon the employer in the negotiation of collective agreements and afterwards; and that collective agreements cover continuing general relations, the writer suggests, "The foregoing will doubtless indicate that the arbitration of disputes under collective agreements will not adequately serve the purpose of such arbitrations unless at least the Chairman of the Board is skilled in the interpretation and application of collective agreements and possesses the responsibility and wisdom arising out of extended experience in the field" which seems to suggest that while training in law is essential, so also is experience in this field. This is followed by assurance that lawyers having the necessary experience are either associated with labour on the one hand or management on the other thus disqualifying each of them for the impartial chairman's role.

I have dealt with this matter at length for reasons already indicated. I have considered carefully the views expressed and I have concluded that the position taken is this:

1.) the chairman must be legally trained and experienced in the field;

2.) lawyers are not acceptable because
   (a) under the established practice of appointing judges they cannot get the necessary training except by being associated with labour or management; and

(b) lawyers who become associated with either labour or management are not acceptable;

3.) only the judges that presently act have the necessary training and experience.

It would seem that in Ontario alone it has become the custom to use judges (and in some cases magistrates) to do labour arbitrations and it seems that the very entrenchment of the custom over the years to the almost entire exclusion of selecting other personnel is the prime factor that stands in the way of using others for the work, rather than the availability of other qualified persons. To state it bluntly, practically no one knows of anyone but judges who can do the work in Ontario because in Ontario practically everyone uses judges for this work.

Should the view be taken that, for a reason that is beyond my comprehension, these chairmanships must be filled by county and district court judges, then to assure that distribution of the work that the carrying on of the county and district court system demands, the function should be declared by statute to be a part of the regular duties of these judges and its assignment must be vested in an official of that court system at the judicial level. Failing the establishment of the office of chief judge of the county and district courts I cannot suggest where the authority should lie.

But in my opinion such a course would take a short view of the situation as it is developing, for the need for arbitrators in this field, as well as in others, is ever increasing and the

time must come, if indeed it is not already here, when the borrowing of judges from our second highest trial courts to man another system of tribunals must cease if the high standard that is necessary in both forums is to be maintained.

I suggest to you as a practical solution to this important matter, for the disposition of labour disputes must be regarded as a matter of major magnitude in to-day's society, the establishment of a body of impartial arbitrators. To ensure the stature and respect demanded of such a group I suggest statutory recognition with authority to control membership. Indeed such an Act could be styled after our other professional statutes.

That suitable persons are available there is no doubt, for Ontario is not to be distinguished from other jurisdictions where judges do not participate in such work. University personnel, particularly from the departments of law and economics, seem to be favoured sources from which to draw arbitrators in many jurisdictions. Lawyers in private practice are not infrequently used and there are persons engaged in other work who would be found desirable. In this day of retirements at an early age in the world of business, the judiciary, the professions and the civil service alike there are competent men who lack only the opportunity to demonstrate their competency as arbitrators. What seems most of all to be lacking is a leadership towards the finding of these "other arbitrators".

Of the certainty of recruiting to such a panel able chairmen with a training and background equipping them for the important post I am confident. I have discussed the matter

with highly respected members of the judiciary at different levels and certain it is that before the passage of much time membership upon the panel would be sought after by qualified and impartial legal personnel.

It is likely that the members of such a panel, once it became established, (and whether they should become known as arbitrators, referees or by some other designation) would be of service in other fields of arbitration and allied activities. In the matter of municipal land arbitrations, for instance, while some municipalities are obliged by statute to use the services of judges, others may name members of the bar for this work and do so with good results. We are told that particularly in the Toronto area the necessity for using judges in many of the arbitrations is occasioning long periods of delay. Elsewhere complaint was made that the sparsity of such arbitrations before the local judge rendered unsatisfactory the results of the occasional one heard by him by reason of his lack of experience in this work. Whether such an institution might also afford relief in some measure to the Ontario Municipal Board which has certain arbitration functions I do not know.

It is accordingly my recommendations that immediate steps be taken with a view to arranging for the establishment of the office of Chief Judge of the County and District Courts, with appropriate authority in line with the observations here made; that steps be taken to render uniform the classes of duties and responsibilities of county and district court judges particularly in the matters referred to herein, and that in line therewith consideration be given to the establishment of a panel of impartial arbitrators of high calibre.

PART IV

Other Matters Relating Principally to the County and District Courts

I have restricted Part III to the basic recommendations which are the subject of your principal assignment to me. In this Part are to be found matters directly related to certain of the principal recommendations, as well as others whose carrying out is not so essential (and in some cases unrelated) to the implementation of the principal recommendations. No attempt is made to arrange the matters in that order nor is the order of arrangement intended to reflect relative importance.

While I have dealt with a variety of matters in this Part and Parts V and VI (and have, in some cases, avoided specific recommendations) the observations made are not to be regarded as merely an account of matters that have occurred to me. I hope that I have succeeded in indicating to you the views of a representative group of the bar and of the officials and others without whose advice this report would not be possible. In some instances, it will be apparent, the proposals involved warrant attention from those who have specialized in the particular field before steps are taken to implement them.

A. Relief from Certain Responsibilities.

While extension of the jurisdiction of the judges of the county and district courts suggests the desirability of relieving them of responsibilities that may be performed otherwise without impairment of the administration of justice, that desirability

is not contingent upon an extension of jurisdiction. My studies and inquiries lead me to believe that nowhere in this country or in England or the United States are the judges of any court possessed of such a multitude of assorted functions.

That the principal responsibility of the judges of these courts must be regarded as the trial and interlocutory stages of civil actions and criminal prosecutions at the county and district court level seems clear. Nor is there doubt that the charging of the judges with a large number of other responsibilities and the acceptance by some of them of still other functions, where the volume of these responsibilities and functions has reached to-day's level, is inconsistent with a recognition of the basic responsibilities.

To avoid misunderstanding let me explain that the matters dealt with under the sub-heading "Uniformity of Judges' Responsibilities" above relate to those functions that tend to unbalance the responsibility load since they are not borne uniformly by all, or most of, the judges. Here I deal with matters which, while they are the responsibility of all, or most of, the judges warrant review either because the load might be lightened by a change in procedure or because they might be disposed of in another manner thereby affording relief in some degree to the county and district court judges.

(1) Assessment Appeals

It was early in the series of meetings that one of the judges described himself as something in the nature of a fifth wheel in the part he plays in our assessment appeal procedure. Nor was he to be the only judge who so described himself. As one of the lawyers expressed it: a judge is trained to determine questions of law but where an assessment appeal comes before him it is generally accurate to say that he is precluded from doing just that. In any event an appeal lies from the judge to the Ontario Municipal Board where it is usually heard by a panel of two members who are not infrequently without legal training.

In many instances this work occupies a very considerable amount of the judge's time. There were, however, representations made to me that the retention of the judge in the appellate capacity which he now occupies is desirable and in support it was said that he presently disposes of many appeals and that he is a judicial person with local knowledge which especially fits him to make appraisals. This was, it seemed, a minority view among the members of the bar who professed knowledge of the situation and I do not recall any judge who discussed the judge's place in the appeal arrangement speaking favourably of it.

I am aware of the constitutional problems that dictate the present limited powers of the judge in the appeal process. The recent amendments which permit the judge effectively to determine matters of law but from a position which is technically outside of the appeal area seem admirably to utilize the services of this branch

of the judiciary and indeed tend to support the logic of removing him from his present appellate position with its restricted scope.

The suggestion was offered on at least two occasions during the autumn meetings that the constitutional problem might be avoided by providing that the appeal should lie to the county or district court rather than to the judge. This would permit the judge to deal with all matters, both of fact and of law, at the appeal hearing. That was regarded as important because of the inconvenience resulting where a matter raised on appeal appeared to be beyond the present jurisdiction of the judge sitting on appeal and which in consequence must be subsequently determined (although perhaps by the same judge) in a separate proceeding brought in the courts. I refrain from expressing a view upon the constitutional effectiveness of such a proposed provision. Certainly its simplicity suggests that it could not have been overlooked by those concerned with the legislative problems involved. And it seems equally certain that in the interests of avoiding multiplicity of proceedings, if it is feasible, it is desirable.

It is only consistent with the nature of these studies that when they involve other tribunals performing judicial functions my comments will not only be constructive, but frank and to the point. In discussing the role of the county judge concern was expressed in a number of instances with regard to the time involved in obtaining hearings and disposition of assessment appeals by the Municipal Board. No criticism was directed at the Board other than upon the basis that its workload which involves responsibilities in many fields apparently renders more prompt action unfeasible.

In discussions had with those purporting to have an interest in improving the situation both in the aspect of the county judge's role as well as that of the Board, the views of municipal solicitors having experience in this work were helpful. A suggestion that appeared most advantageous in curing the situation would be the appointment of a limited number of assessment experts who need not be legally trained personnel and who would sit either singly or in panels of two as does the Ontario Municipal Board. An appeal to these appointees would replace both the appeal to the county judge and the appeal to the Board. The recent provisions for determination of questions of law by the county judge would continue in force. These appointees would specialize in this field; would become highly expert in their appraisals, and would not have other responsibilities to interfere with their availability. It is estimated that two panels of two members each would be able to handle the work throughout the province with promptness and expedition.

Although the use of the term "appeal by way of trial de novo" is more familiar in discussions of law relating to criminal and other prosecutions, it would be accurately applied to at least some of the appeal stages of assessment proceedings and would likely be regarded as the only practical mode of appeal from the board of revision to the county judge. It has been suggested, however, that where an appeal is taken from the judge to the Municipal Board an appeal on the record would have advantages in reducing inconvenience to witnesses and shortening the time spent by the appellate tribunal. Certainly the suggestion merits consideration.

(2) Election Responsibilities

While it is probably accurate that much of the work done by the judges in connection with provincial and municipal elections is more administrative than judicial; that it could be performed equally well by other officials, and that in any event performance of functions under our senior election officials is in safe hands, I nevertheless am of the view that in this aspect of government organization the appearance of a member of the judiciary in a position of authority is highly desirable; and I am given to understand that the time demands of this work are not severe.

(3) Appeals by Trial de Novo

The trial de novo inclines to be a departure from the principle that anyone charged with an offence is entitled to a fair trial for under this practice two full scale trials become available. Whether this system of appeal owes its origin to the impossibility in early days of obtaining a transcript of the first trial for purposes of an appeal upon the record I do not know.

I was assured on a number of occasions, however, that replacement of the appeal by way of trial de novo from a magistrate by an appeal upon the record would be effective in shortening the hearing of the appeal by the county or district court judge by very substantial period of time - perhaps reducing the time from a day and a half or two days to an hour and a half or two hours in some cases. That an appeal on the record provides adequate opportunity for review must surely be borne out by the fact that

this is the established system throughout the higher courts; it is the plan followed in appeals from conviction of indictable offences, and it is also the appeal practice in the case of liquor offences.

It was explained to me and confirmed in several centres by Crown and defence counsel alike that there is a tendency in some quarters for defence counsel to regard the trial before the magistrate lightly where he knows that a trial de novo is available. Someone described the trial before the magistrate as often being regarded as rather in the nature of an examination for discovery in cases where a conviction results. I was told that not infrequently counsel will call only convenient witnesses before the magistrate but when the matter goes to the county judge more thorough preparation will result in the calling of many more witnesses and a trial of much longer duration than before the magistrate. The practice permits the Crown Attorney also to take care of matters overlooked or otherwise omitted in the trial in magistrate's court.

So well is the situation expressed in a letter that I received from one of the magistrates that I quote from it:

> ". . . The present situation contains three factors which defeat the course of jurisdictions. Firstly, by the time the appeal comes up, details of the offence have become dimmed in the mind of a police officer and slight variations in evidence are magnified to destroy confidence in his testimony. Secondly, the defence counsel have an opportunity to drop some poor witnesses and pick up others and to vary just slightly the evidence to avoid the pitfalls suffered in the original trial. Thirdly, the Crown introduces new witnesses confounding the defence. The evidence in magistrate's courts is accurately recorded and the appeals should stand or fall on the first evidence of

witnesses. Crown Attorneys are in most instances too busy to review in detail the transcripts of evidence and point out the inconsistencies in the evidence in a trial de novo. If a trial de novo is believed to give greater assurances of justice then surely there is more reason to adopt this procedure in appeals to the Appeal Court in indictable cases."

Throughout the hearings concern was expressed regarding the occasioning of inconvenience to witnesses, particularly where it might reasonably be avoided. In light of that concern it is difficult to justify the practice of requiring a witness who has already attended before a magistrate, given his evidence and been cross-examined upon it, to return a month later and go through the same procedure before the county judge.

Those who supported appeals by way of trial de novo argued that it is not always possible to obtain a fair trial before the magistrate because of the crowded conditions of his lists and that they may be taken by surprise if only one trial is permitted. The first of these arguments seems a criticism of court conditions and if it is accurate, representations should be made to the Co-ordinator of Justice Administration for none were made to me except in this indirect reference. Nor do I feel that the second argument referred to above constitutes good reason for continuing such a system.

The concern expressed for the accused person who because of his lack of counsel is said to be entitled as of right to a trial de novo, seems to overlook the plight of the accused tried in the same court whose penalty may be more severe because his offence is an indictable one.

Reference was also made to the fact that even though the trial de novo is a hearing upon evidence adduced before the county judge, the expense of securing a transcript of the evidence in the lower court is involved. The reasoning that prompts this requirement, it was explained, is that if a witness who has appeared at the original hearing is not available to attend before the judge, it is important to have his testimony available.

While there was sporadic opposition to the proposal that trials de novo be replaced by appeals on the record, the majority view of those who expressed opinions was strongly in favour of the change.

I must not depart from this subject without commenting on the importance of the magistrate giving reasons for his findings. Apparently there are still some magistrates who overlook the importance of the practice. Although a circular is unlikely to correct the situation this appears to be a matter that might well be featured at the regional meetings of magistrates sponsored by the Department.

(4) Mechanics' Lien Proceedings

As the designation indicates, the legislation providing for this special type of proceeding (and which was first enacted during the last century) was apparently designed for the relief of mechanics. It was agreed by those who discussed what appears to be the unsatisfactory state of the provisions for

procedure to-day that mechanics' lien proceedings are now used far more often by suppliers and contractors than by mechanics.

Perhaps it is because large amounts are in issue, as well as the complexity of modern financing and developments in other aspects of the law, that the profession seems now to be generally unhappy with the rules of procedure. In any event they did not come empty handed in the matter of constructive suggestions and there seemed a general unanimity as to what should be done, although many of those seeking reform professed a lack of expert familiarity with the procedure.

Those who had been engaged in this type of litigation contended that lack of pleadings and the accompanying absence of discovery is unfortunate. Most felt that the introduction of pleadings and discovery would result in a very substantial number of settlements and that in the case of those actions where settlement would not be achieved the length of the trial would be greatly reduced.

Others, perhaps more experienced in the field, took the view that a mandatory requirement for pleadings in all such proceedings is impractical and might, where those in the position of claimants are large in number, result in a mass of pleadings that would deny the practical result sought after. Some thought that perhaps the solution lies in a vesting in the judge of the power to order pleadings and permit discovery. It was generally contended that the nature of the procedure defies a good

working knowledge by others than specialists in the field. Certainly the frequency of the complaint and the attitude of the bar calls for a study of the present practice.

I have consulted with one of the Masters who handles much of this work. He assures me that certain pleadings, although a bare minimum, are necessary; that under present requirements the true situation cannot be ascertained until all interested persons appear on a day fixed for that purpose; that there is presently power in the court to order pleadings and permit discovery; that the ordering of pleadings on a general basis is not usually feasible; and that there are presently means of handling the situation satisfactorily. He then described the "Toronto method" of calling the parties together so that they might investigate their respective differences and assured me that this often occasions a settlement before trial. The same practice had been described to me by one of the county court judges who feels that he has attained a good degree of success in the same manner.

In any event the desirability of a study by qualified persons of the situation as it exists across Ontario with a view to more expeditious disposition of these matters is strongly indicated.

(5) Validating Late Registrations

It is provided in The Bills of Sale and Chattel Mortgages Act, The Conditional Sales Act and certain other statutes that where registration has not been made within the time limited

by the Act, it may be made thereafter where permitted by the judge. It was observed that in some centres of the province the judge finds it necessary to spend an appreciable amount of time on these matters; that such late registrations do not adversely affect rights acquired by others during the period of lapse, and that permission is invariably given by the judge.

It seems desirable to vest this power in the clerk of the court but he should also be given authority to refer to the judge for disposition by him any such matter that appears to present difficulties.

(6) Applications for Citizenship

In some parts of the province the county judge must spend an appreciable amount of time examining applicants for citizenship. Several judges expressed the view that because of the number of applicants it is not possible to conduct the type of examination that they feel is desirable. This is but one more of the pressures that must be reconciled with judicial duties. In recent years the Department of Immigration and Citizenship (Canada) has been establishing special courts to perform these services thus relieveing the judges of the obligation. I am advised by the Deputy Minister of that Department, "I think it is safe to assume that the trend (special courts) will continue and that ultimately, - though I would not anticipate this for a good many years, - the County and District Courts will be relieved of citizenship applications altogether."

(7) Persona Designata

I have already commented upon the unique position that appears to be occupied by our county and district court judges by reason of their numerous responsibilities under various Acts. Judge Kinnear, in the articles referred to above mentions a number of them. One of the other judges has kindly furnished me with a list which enumerates duties under some sixty-three statutes but the list was apparently prepared when the Revised Statutes of Ontario, 1937, were still current. I have been assured that that number would now be exceeded by at least twenty.

While it would not be gainful either to list the statutes or determine the exact number, or to examine into the nature of the duties in each, it is pertinent to comment that there appears to be no pattern or restriction governing the responsibilities vested in the county and district court judges. To refer to but a few appearing in the list furnished me, he is Chairman of the County Board of Audit; approves adoptions; appoints arbitrators where land is taken by an agricultural society; hears assessment appeals; permits late registration of certain documents; determines land values connected with fixed municipal assessments; appoints trustees under The Bulk Sales Act; authorizes the sale of unused cemetery plots; determines paternity and orders support; declares Children's Aid Society wardships; orders delivery of conditional sales agreements; reviews bailiffs' charges; sets aside proceedings under The Creditors' Relief Act; determines the adequacy of wills as

as regards dependents; and hears appeals on the apportionment of the cost of drainage ditches. Although these references relate to only a fraction of the Acts listed and are not specially chosen but taken in the alphabetical order in which they appear, they will serve to demonstrate the variation in responsibilities. It will be apparent also, I think, that while the duties imposed by most of the statutes are not onerous, the weight of the combined responsibilities must incline to interfere with the more basic functions of the judiciary.

The distribution and diversification of this volume of work renders it unfeasible for me to offer any easy solution to the problem. Rather it is a matter that you may feel justifies a special study directed at relief in as many avenues as possible as well as the exercise of caution against the assignment of further duties. As I have referred elsewhere to the apparent need for a panel of impartial arbitrators, it may occur to you that this proposal is not unrelated to the problem here although certainly any relief which it offers is of a restricted nature.

(8) Division Courts

A means of relieving the county and district court judges of some, at least, of their division court work is discussed in Part V.

(9) Juvenile and Family Courts

The relief of those county and district court judges who are charged with the work of this court is also discussed in Part V.

B. Costs

The problem of costs continues to confound the profession. I assume that any increase in county and district court jurisdiction (or indeed division court jurisdiction) would carry with it a revision in the scale of costs and that view seemed to be shared by those who discussed these jurisdictional matters with me. I may say also that I have assumed that so long as local taxing officers are in the majority of instances to be persons without legal training there must continue to be rather severe restrictions upon their taxing authority. Nor does it appear advisable to vest taxing powers in the local judge.

Beyond these observations it is not my purpose to enter upon an excursion into the costs structure and existing tariffs of costs. These matters, in their different aspects, are the subject of fairly regular study by the rules committee and while I would in no sense seek to review the deliberations of that body, a suggestion pattern that reflects matureness of consideration and uniformity of thought was so frequently manifested or approved in principle at the meetings that I am prompted to suggest that there is a basic principle which merits attention by those most familiar with our costs structure, to be followed, I would hope, by appropriate revision of the tariffs.

The "gap" or "jump" (for both terms were used as between the top level of county and district court costs and the lowest level of Supreme Court costs) and, to a lesser degree, the "gap" or "jump" between division court costs on the one hand and the county and district court costs on the other, seem to be

regarded by many as constituting the major factor or factors contributing to the dissatisfaction of the bar with our present costs structure.

It was sometimes put to me that the preparation of a county court negligence action may be no less complex or onerous than that of a Supreme Court action to which a substantially higher scale of costs will apply. The reference above to the contention that "there is no money in county court actions" is a variation of the same theme.

Someone suggested that a solution is unlikely until we cease to refer to "county court costs" and "Supreme Court costs". Another suggestion in line with that conceived a number of different tariffs, designated by letters perhaps, whose applicability would depend on the amount recovered or the complexity of the issues without regard to the court in which judgment might be obtained. It would seem desirable that the judge should specify the tariff applicable for in the case of contributory negligence, for instance, set-off and other factors other than net recovery might be important in determining the appropriate tariff. I cannot accept the contention that because of the additional argument that might be involved the judge should be excluded from any determination of the scale applicable. The key to an effective remedying of the present situation seems to involve flexibility in determination of the appropriate scale, having regard to all relevant facts, by vesting discretion in the trial judge. Nor is this a departure from established principles. Precedents that may be found helpful in pursuing a study of the above suggestions will be found in the tariffs of Alberta, British Columbia and New Brunswick.

In discussing the desirability of avoiding any suggestions of contingency fee principles and weighing that against the suggestions contained in the preceding paragraph, reference was made to the fact that in settlements (and some ninety per cent of our negligence actions are concluded by that means) lawyers frankly compute the costs to be allowed in relation to the amount of the settlement. That a quite different principle should apply following a trial is not easy to explain.

Should a study be undertaken it is likely that rule 649 which provides for penalizing a party whose action is commenced in a higher court than the action is regarded as warranting, will require review. Indeed it is appropriate to deal here with the careful study of this rule which I feel must be made if the county court jurisdiction is increased. The difficulty of selecting the appropriate court grows greater according to the amount that the jurisdiction of the county and district courts may be increased. Views of judges vary in the granting of relief from the provision. While the rule must, in some form, be retained in order to prevent the bringing of actions indiscriminately in the higher court (as has happened elsewhere) its review should not be overlooked with any increase in jurisdiction.

Summing up this branch of the study I suggest that revision of the county court tariff is essential in the process of any extension of the jurisdiction of the county and district court; that a review of existing tariffs with a view to eliminating the distinction between county and Supreme Court tariffs as presently existing seems desirable, and that increase in the county and district court jurisdiction renders necessary a review of rule 649.

C. Sittings of the County and District Courts

(1) Non-Jury Sittings

In a number of counties and districts a practice has developed of arranging for the trial of non-jury cases at times other than during the period set for the regular sittings. This is not infrequently done by setting actions down for the regular sittings and then arranging dates of trial with the judge, but in one instance I was informed that there has been no regular non-jury sitting for years, the practice being to obtain a special date from the judge and then serve notice of trial for a "special sittings" of the court. By whatever means departure from the regular sittings is effected, it was one of the judges who first pointed out to me what appears to be the inevitable result. I refer to the "spreading out" process which is likely to cause "one sitting to run into the next" as it was expressed. More than one of the judges told me of the extreme difficulty, if not impossibility, of preventing such a system from, in effect, destroying itself notwithstanding extreme care on the judge's part. In at least one of our more densely populated counties it has been abandoned entirely after being in operation for some time. While such a scheme has advantages for bench and bar alike, the system of disposing of the list at each sitting is the time-tested plan of handling trial work. It is apparent that a distribution of trials of civil non-jury cases across the calendar is not amenable to a system of interchange.

Before leaving what is essentially a discussion of the desirability of a practice of appointments for hearing as against the traditional system of regular sittings let me tell you of a

conclusion at which I have arrived on the basis of several discussions with members of the bar across the province, for I am convinced that it provides a solution to what might otherwise be regarded as a problem. The desire to depart from regular sittings is largely created by the manner of arranging and organizing the lists. Perhaps I should term it failure to arrange and organize the lists. If the bar will co-operate with the registrar of the court by indicating preference as to date, probable length of trial and other relevant matters, the list can be organized in such a manner as to occasion a minimum of inconvenience to all concerned. The plan depends upon co-operation between the bar and the registrar.

It is my respectful view that no amendment to the statute is indicated and also that in the interests of successfully accomplishing a system of interchanging judges, every effort should be made to hold non-jury trials during the regular sittings as prescribed by the statute.

(2) Power to Alter Sittings

The dates of the commencement of the civil sittings of the county and district courts and of the courts of general sessions of the peace are prescribed by The County Courts Act and The General Sessions Act respectively. While each contains provisions for altering these dates, postponement requires sixty days' notice and advancement seems to necessitate an order-in-council.

Sittings of the Supreme Court on the other hand are not governed by statute and it is not unlikely that the magnitude of the task involved forbids statutory prescription. In any event it is not my intention to suggest any departure from the present practice.

It appears, however, that instances of conflict between sittings of the two levels of courts have occurred in some cases and in the interest of avoiding unnecessary jury attendances as well as formal but abortive openings, some better arrangement than the present one is desirable. The suggestion that was put forward is simply to vest authority in the local judge to alter the commencement date, either by advancement or postponement. The thinking that prompts this direct approach is that the date or dates of the Supreme Court sittings usually become known some time in advance of the sittings. Just how much advance knowledge is available varies with the dates of the sittings throughout the province.

That some restriction should be placed upon this authority seems desirable when one considers the facility of travel and the desirability of avoiding concurrent sittings in adjoining counties. In the event of the establishment of a Chief Judge of the county and district courts adequate safeguards against such occurrences might be provided by requiring his approval of any proposed change of date. Indeed such an appointment would likely accomplish a co-ordination of arrangements for sittings as between the county and district courts and the trial division of the Supreme Court.

(3) Sittings Outside the District Town

Because of distances involved and special situations that presently maintain, this proposal is applicable particularly to certain of the districts. To demonstrate by specific example: Cochrane, the district seat for the provisional judicial district of the same name has an area population of about 4400 and a bar comprising one or two lawyers as compared with a population of about 41,000 and a bar of some fifteen members in the Timmins area. Cochrane is located a distance of some seventy miles from Timmins.

There is no need to enter into a discussion of the convenience that would be afforded by holding certain sittings of the courts at Timmins. Convenience to the public is important; convenience to the bar is a saving to the public and thereby a means of rendering the courts of justice more readily available.

Representations made to me were also directed to non-jury sittings of the Supreme Court and I was advised that the matter has already been discussed with the Chief Justice of the High Court. I shall restrict my observations to the district court. In my respectful view arrangements for non-jury sittings of the district court in Timmins are desirable. I am assured that court-room and other facilities are already available. There are, I understand, few jury trials in the district court. In any event the practice of conducting trials at a point outside the district town at this court level is such a departure from custom that it seems well to test it with non-jury sittings of the district court in Timmins.

It may thereafter be determined whether an extension is desirable both in other locations, notably Kirkland Lake in Temiskaming as well perhaps as Chapleau in Sudbury and Atikokan in Rainy River and in certain other aspects of practice, as for instance, the appointment of additional special examiners, and perhaps jury trials.

In one instance it was intimated that while the bar favoured such a plan for the Supreme Court, its members were reluctant to make a similar recommendation with respect to the district court because of special personal circumstances that rendered it undesirable for the judge to travel. This, it seems, is but further evidence of the need for a better and more flexible system of interchange of judges under a comprehensive plan, for even now there are judicial duties (e.g. division courts) which must suffer if judicial travel is sought unduly to be avoided.

D. Criminal Aspects

Concern was expressed on two occasions (and in each case it was the local Crown attorney who sought improvement) regarding the waiting period that is sometimes involved in bringing an accused person to trial. In one instance the Crown attorney suggested that where a person awaiting trial in general sessions court is destined to be confined for a long period of time because he is unable to obtain bail and because no court is scheduled in the county for an early date, it should, in his interest, be possible to hold the trial at an earlier court that might be scheduled in a nearby county. The following day in the county

town of an adjoining county the local Crown attorney expressed concern about the same situation but his proposed remedy was a different one. Shortly stated, he would render the holding of general sessions courts more flexible by vesting necessary authority in the judge. Both proposals are in line with recommendations contained in the Report of the Interdepartmental Committee on the Business of the Criminal Courts presented to Parliament in England earlier this year (see pages 34-37; 119-121 of the Report.)

E. Court Reporters

In several centres I was told of embarrassment and delays occasioned by the difficulty encountered in obtaining the services of competent court reporters. This extends to examinations for discovery and, perhaps because fewer persons are attracted to the work, is a growing problem. Some of the judges urged the appointment of these officials to the civil service and meritorious as the suggestion no doubt is, I cannot feel that it would correct the situation in any substantial way. In one instance I was told of a rate of seventy-five dollars per diem being asked by a reporting firm.

The National Council on the Administration of Justice did extensive research regarding the problem and arranged for a demonstration of what its studies had indicated as being the equipment best adaptable to our court conditions, at the annual meeting of the Canadian Bar Association at Quebec City a year or two ago. Those who were in attendance were impressed with the reliability and other advantages of some of the equipment

shown with the result that certain types, selected with care, are now being used by trained operators in various parts of Ontario.

In a report made this year by the Alberta representatives of the Council the following paragraph appears:

> The concensus of opinion seems to be that the answer to the shortage of court reporters lies in mechanical reporting, which will probably develop only to the extent that the bar exerts pressure upon the responsible provincial authorities.

These observations are not to be construed as suggesting that any recording equipment is adaptable to this important work or that the services of a competent operator may be dispensed with. It must be borne in mind that a certificate of accuracy is essential to the use in court of any transcript obtained.

PART V

Matters Relating to the County and District Courts and Other Courts

Training and Instruction of Court Officials

(1) Local Registrars S.C.O.;
County and District Court Clerks;
Sheriffs.

Because these three offices are commonly combined in one official, it is convenient to group them for the purpose of considering proposals for training and instruction. I do not propose to deal with suggestions that with the constant increase in population and volume of work, separate officials should replace the present combined arrangement in some instances, other than to observe that this appears to be a matter for the attention of the Inspector of Legal Offices and the Co-ordinator of Justice Administration, to be dealt with in the special circumstances of each county or district.

My concern here is rather that of fitting new appointees for the important duties of their office as well as considering something of a continuing character in the nature of what has become known as "refresher courses", an institution that has proven beneficial in the legal and other professions. The furnishing of written instructions in the form of a manual or manuals will also be considered. Any such plan of necessity involves the affording of appropriate instruction to the present body of officials.

A reminder of the wide range of the functions of these officials, and in particular perhaps those who combine more than one of the offices, is not out of order here. In addition to the administrative and executive duties of the offices there are certain quasi-judicial responsibilities. I refer to the taxation of costs and the presiding at examinations as special examiner. The scope of the work is often made more complex by including that of the Registrar of the Surrogate Court.

It is not irrelevant to observe that under the English county c ourts system registrars of the courts are required to be trained in law. This is, in fact, one of the reasons that an efficient county court system is able to function there with substantially fewer judges than in Ontario, when calculated on the basis of comparative populations.

Such however is not the case here and it is not my purpose to recommend a change in the required qualifications of appointees to any of these offices but rather to consider how best to equip those who now hold office, as well as future appointees, to perform their functions with an efficiency becoming to the administration of justice. In a number of counties the bar feels strongly that the present situation requires correction. Enquiries of officials present at some of the meetings demonstrated clearly that there is presently no arrangement available for the training of new appointees either by way of oral instruction or written material. In most instances the saving feature lies in reliance upon an efficient deputy who through years of experience has at

least a practical working knowledge of the daily routine and the more common problems of the office. It is, of course, desirable that the senior man should have instruction also upon basic principles, statutory enactments and rules of court relating to his administrative responsibilities.

Having discussed the matter with members of the bar, it appears that instruction is not only regarded as important, but also that its accomplishment should prove feasible without too much difficulty. I was assured that several law schools now established in the province would likely assist in any program of instruction. Certainly such a program must be planned with care and executed in a manner that will prove worthwhile to those officials, many of whom realize their lack of basic knowledge and are sincerely anxious to obtain adequate training.

It would accordingly be my recommendation that the Co-ordinator of Justice Administration be named chairman of a committee to work out plans for the training of these officials. The committee should include experienced officials with legal training now holding these offices as well as teaching personnel from one or more of the law schools.

The committee should prepare outlines of courses to be given to all present incumbents and persons hereafter appointed, bearing in mind the variation in the combinations of appointments that are from time to time made. Whether such a course should occupy three days or a week must also be determined

but I commend to the committee the advantages of a carefully planned, short, basic course in the interests of affording its advantages to a maximum number of officials for there will be those who will find reasons for non-attendance, particularly if more than a short absence from the office is involved. I make this observation because of the views expressed by some lawyers that only a lengthy course would suffice and also because my experience with the coroners of the province has demonstrated that much worthwhile instruction can be provided to interested officials in a very short space of time.

And I desire to express the importance of rendering this instruction available to the deputies of the various officials. It is not an overstatement to say that their attendance at the courses is almost as important as that of their superiors. In order to permit the necessary absences from the offices across the province it may be found by the committee that each course will require to be given at least twice in its original presentation. I would anticipate that such courses would be presented at several Ontario centres, perhaps the law school seats and other selected locations. How to handle the training of officials appointed thereafter is also a matter for consideration by the proposed committee.

In the matter of lectures or other oral instruction, it would seem desirable also that a continuing program be maintained to be conducted perhaps one Saturday morning each month for seven or eight months of the year. By this means

instruction could be given in matters presenting special difficulties and legislation of recent enactment reviewed.

Before leaving this group of officials I would comment upon the lack of any helpful material in the nature of a manual or other book of instruction. The only such material appears to be a manual for sheriffs which some of those who have had occasion to use have described as not very helpful because of the general nature of its provisions.

In case the proposed committee referred to above should be instructed to arrange for the preparation of appropriate manuals, as I respectfully feel it should, I commend to its study the County Court Manual (Third Edition, 1957) published by Her Majesty's Stationery Office as to both style and arrangement.

The opening chapter with its basic approach and the other chapter expressed in plain language designed for easy understanding constitute a model for this type of aid, particularly for a work that is to be placed in the hands of officials without legal training. No such guide-book can, however, replace competent instruction. Three quite separate manuals would appear to be indicated here although their co-ordination and preparation under common direction is, of course, essential to a satisfactory result.

Finally, in order that these officials, most of whom lack the benefit of legal training, may be kept properly posted with necessary knowledge in their work, it appears desirable that an official with legal training should be made

responsible for sending to the officials, be they county or district court clerks, registrars of the Supreme Court or sheriffs, short memoranda advising of any important development or change, either by statute or judicial decision, in the law affecting the office. It appears logical that this responsibility should fall within the office of the Co-ordinator of Justice Administration or the Inspector of Legal Offices. It is equally logical that he should be responsible for advising the magistrates, coroners, justices of the peace, surrogate registrars, division court clerks and any other public officials coming under the supervision of the Attorney General's Department of any significant changes in the law affecting their respective offices.

It is not to be overlooked that one important effect of better trained court personnel will be the greater assistance afforded the judges. While such training will manifest itself in many ways in easing the judge's load, not the least important of these will be the attendance of the official upon the judge in court and chambers matters where reliance can be placed upon him to keep records now handled by the judge in many instances, because of this very lack of training.

This prompts me to mention here a proposal made by at least one of the judges which, while general in nature and involving rather wide study because of the number of duties to which it relates, seems to offer improvement in several areas.

It is this: that if a number of the responsibilities presently charged to the judge were made functions of the court, much needed provision for filing of documents, clerical work and the attendance upon the judge would thereby be afforded. This would relieve the judges of matters of detail and render more time available for their judicial services.

(2) Magistrates; Justices of the Peace.

Having dealt in some detail with what appears to be desirable in the interests of instructing registrars, S.C.O.; county and district court clerks and sheriffs, I may state briefly but without thereby detracting from the importance of the submissions that have been made to me, I trust, that it is the feeling of many members of the bar of the province that a like need exists for the training of magistrates and justices of the peace. In this I concur.

Many magistrates and perhaps most justices of the peace are without legal training. To expect a newly appointed magistrate, particularly one who is not a lawyer, to obtain adequate instruction in the dispensing of justice by sitting on the bench and observing another magistrate, is asking a good deal of him.

I know of the regional meetings of magistrates that have been held over the past few years in various parts of the province. They have served an excellent purpose in the discussion of special problems such as uniformity of sentencing

principles. These, however, are designed for the discussion of common problems by experienced magistrates and are not intended to serve the purpose of basic instruction for newly appointed magistrates.

I know also of the series of meetings for the instruction of justices of the peace that was commenced some time ago. While there was a period during which the series was interrupted i t is understood that they were regarded by those justices who had the opportunity of attending as being of real benefit and I am assured that they are to be resumed.

Certainly a concise manual designed for the guidance of magistrates and justices of the peace would be useful. The brochure on the conduct of magistrate's courts prepared by the Magistrates Association is excellent and the Association is to be commended but this work was of course never intended as a general guidance manual for magistrates and justices of the peace.

There is a great and growing body of law to be administered by our magistrates and justices of the peace. Its complexities and requirements deny its easy learning or indeed a proper working knowledge short of competent instruction. I have no doubt that with good planning appropriate instruction for both these groups of officials, including present incumbents and those hereafter appointed to office, can be accomplished.

As I do not deal specifically with justices of the peace elsewhere in this report I would here commend to the study

of those responsible a review of the territorial limitations of these officials and consideration of a vesting of province-wide jurisdiction in them. In one instance it was related that a justice of the peace holds separate appointments for three different adjoining areas which involves a careful designation of his different capacities each time a document is signed by him.

PART VI

Matters Relating Principally to Other Courts

A. Surrogate Courts

It has been suggested that, if there is to be an increase in the jurisdiction of the county and district courts, the powers which the judges have under The Surrogate Courts Act should also be enlarged. This would extend to increasing the $2000 figure in section 31(1) and a revision of the powers involving the interpretation of wills. I leave these matters for consideration when the policy to be followed with regard to my principal recommendations has been determined.

B. Division Courts

(1) Monetary Jurisdiction

With the exception of certain representations that were made in the northern part of the province, the bar generally opposed any substantial increase in the monetary jurisdiction of division courts. These courts are still regarded as the "poor man's court of equity" and lawyers are loath to see them deprived of their long established role. The view was expressed many times that increased jurisdiction would necessitate pleadings and discovery and thus destroy the simplicity of procedure and ease of access which has always typified our division courts. Some thought that a requirement for pleadings even at present monetary levels would result in shorter trials and a saving of judges' time, although this was not urged, but all appeared to agree that to increase the jurisdiction beyond the $400 limit would render pleadings, and the accompanying right to discovery, a practical necessity.

Nor did the monetary inflation of recent years seem to influence thinking at this jurisdictional level as was the case with proposals for increased jurisdiction in the county and district courts. It was not to be denied, however, that the change in the dollar value, combined with the design-trend of motor vehicles over the past twenty years has deprived the division courts of jurisdiction in many accident claims where this would seem to be the appropriate tribunal. That view was accompanied, as a rule, by agreement that a "rounding off" of division court jurisdiction at $400 (where it now stands for certain types of actions) seemed to be in order. Accident claims are presently limited to $200.

And "getting down to cases", as we did in connection with certain types of claims in contract as well as tort, it was interesting to find concern expressed at so many meetings regarding contract practices connected with door-to-door sale of certain types of commodities. This was related to these studies because of the number of cases where action brought on the contract results in a default judgment. Other features of some of such contracts were also commented upon with much feeling: the immediate assignment of the promissory note by the vendor of the commodity to a finance company which is calculated, usually accurately, to deprive the defendant of what might be regarded as his normal defences in an action brought by the finance company; the inclusion of provisions in some of the contracts for bringing action for collection in a Toronto division court, regardless of the place of sale.

So concerned was the bar of one county town with the situation that they determined to defend all actions brought by one organization regardless of the ability of the various defendants to pay for legal services. The simple procedure of the division court together with the lack of any provision for awarding costs against a plaintiff was regarded as encouraging the bringing of this type of action with resultant default judgments in many cases. This was put forward, appropriately or otherwise, as a further reason for limiting the monetary jurisdiction of the division courts in contract to its present level.

Distances, facilities for travel and circumstances relating thereto distinguished some of the views expressed by the lawyers of the provisional judicial districts from those of their colleagues in the south. A general inclination toward increased monetary jurisdiction in the division courts was apparent in northern Ontario on the part of lawyers and non-lawyers alike. That this favouring of greater division court jurisdiction is generally prompted by a desire to "bring the mountain to Mohammed" I have no doubt. And there would be a secondary effect. An instance was given of populated communities of 80 and 150 miles respectively distant from the district seat. Although division court sittings are held there only once or twice a year, as a rule, even a delayed trial is of greater convenience and less expensive than a trip to the district seat, which is necessary in a district court action. The secondary effect to which I refer would be the more frequent sittings that would be "justified" by the bringing of more actions in the division courts. I have included the quotation marks because there are likely those who will wonder

whether it is the number of cases that is to be regarded as determining whether or not a prompt trial should be afforded.

But this matter of convenience must not be regarded as the sole factor in determining appropriate jurisdiction and procedure in northern Ontario, for the observations regarding pleadings and discovery are important in all division court matters throughout Ontario.

Part II of The Division Court Act contains provisions "Applicable Only to Districts". In section 214 provision is made for trial of cases involving up to $800 where the parties consent. This provision (as well as clause b of section 1 of section 54 which permits trials of personal actions up to $400 in the counties where the parties consent) is seldom used, so I am assured.

Having carefully considered the situation in the light of the advice offered by members of the bar engaged in division court practice in all parts of the province, I have come to the conclusion that it is desirable

(a) to revise section 54 of The Division Courts Act by replacing the $200 limit with $400 wherever the former occurs. This will render clause b of subsection 1 unnecessary;

(b) to amend clauses a and b of section 108 of the same Act so that an appeal will lie only where the sum in dispute exceeds $200; and

(c) to amend section 214 to permit a plaintiff to bring action for amounts up to $800 provided that in such actions the county court rules regarding pleadings would apply and that a judge, upon application, might in his absolute discretion make an order as to discovery. In such actions the division court practice of permitting a party to be represented by an agent should not apply.

(2) Costs

It has been strongly represented that provision for the awarding of costs in all division court actions is desirable. Because of the present state of the law, litigants are sometimes deprived of the assistance of counsel, for the charging of a reasonable fee would be out of line with the amount actually involved. It is also argued that certain persons in the position of those who have, not inaccurately perhaps, been referred to as "professional defendants" not infrequently go to trial with a defence so weak that it does not warrant a trial. They are perhaps gambling on the inconvenience or fear of a trial occasioning the plaintiff to "give up" and are encouraged to adopt this course by the knowledge that in any event substantial costs cannot go against the defendant. This observation is, in certain of its aspects at least, offset by the criticism that county court costs at the lower claim level are so high that in considering settlement a party must concern himself with costs to an extent that ought not to be the case. Both of these observations bear out the criticism that there is too great a "jump" from

or "gap" between division court and county court costs. If my suggestions regarding costs are accepted, the whole system at various court levels will be reviewed by persons qualified to make such a study and I would regard division court costs as being comprehended in such a survey in the light of the above observations.

Perhaps too such a committee might review witness fees in the division courts. The fee is now one dollar a day plus mileage. While such a fee is admittedly outdated in this day when considered against increases that have been effected in the tariffs of other courts or as relate to dollar value changes through the years, the solution to the obvious problem is not simply to increase the fee, for any helpful increase would be difficult to reconcile with the amounts that are often involved in this court.

(3) Fees Payable to the Court

The amount of the fee which is payable upon instituting an action in the division court is not infrequently criticized in the light of corresponding fees payable in other courts where much larger amounts are at stake. Nor is this fee always sufficient to see the action through to its conclusion and the recovery of the amount claimed. Related to this is the maintenance of a system of bailiffs who must be paid a fee for service of the claim although in the higher courts the litigant is at liberty to arrange for service of process as he sees fit.

It was suggested to me on several occasions in southern Ontario that the system would work better with fewer division courts. In many of the smaller courts the officials are not efficient, it was said, and when one considers the scant amount of division court business that is the lot of some clerks and bailiffs it is not surprising that their knowledge of division court practice and procedure falls short of that of an expert.

Judges and lawyers alike felt in most parts of southern Ontario that the elimination of certain courts would make for greater efficiency in the overall picture. An interesting observation is that retention of division courts in outlying parts cannot be regarded as assuring a saving to the parties for it is frequently cheaper to come to the county town with the necessary witnesses than to cause each of the lawyers to devote a full day to the time involved in holding a trial at a point remote from the county seat. Workers drive many miles to and from work under modern conditions of travel; a twenty-five mile run to the county town is not what it used to be. And judges can tell of attending court in a distant hamlet accompanied by a retinue of officials only to find a minimum of justification, if any, for the trip while other matters have had to await the judge's return to the county court house.

A number of questions present themselves in this situation and I sought advice from Mr. A.A. Russell, Q.C., the Co-ordinator of Justice Administration (and now Inspector of Legal Offices as well). One of his observations is most helpful, particularly when one considers the various involvements that flow from

> "The Bar has contended for some time that the fees for division court process are too high in comparison with fees charged in the county court and the Supreme Court. It should be noted, however, that officials at the other levels are on salary and in the division court fees must be high enough to give clerks of the smaller courts adequate compensation."

The situation seems to be that in this day and age we have more division courts than can be justified on any reasonable basis and their very number is the real cause of at least some of the problems. Clerks and bailiffs (with a single exception) are paid fees; each court is expected to be self-supporting (there being no subsidy arrangement in spite of what must be looked upon as a considerable "profit" by some of the larger courts), and consequently the fees must be kept at a level to provide what may be regarded as worthwhile remuneration for the officials of the smaller courts. Notwithstanding adherence to this principle figures show that gross earnings for each of 47 courts in 1959 were under $500; in 47 more they were under $1000; and in 51 others under $2000. This would seem to establish that in spite of the maintenance of this policy the objective has not been accomplished. It is a natural consequence that the system has fallen short of an efficient functioning of these courts whose successful operation is so important to claimants having occasion to use them.

With a reminder that it seems strongly to be the view of bench and bar alike that in southern Ontario at least the proper functioning of this system of courts dictates the closing of a number of the smaller ones, I cannot do better than to quote once more from Mr. Russell:

"There appear to be two alternatives:

1. As we are not in the "horse and buggy" days, it would appear that most, if not all, of the small division courts could be closed and the remaining clerks placed on salary. Once on salary they would qualify for the Civil Service benefits. While the situation is somewhat different in the districts from that in the counties, in most counties - with the exception of the larger centres - one court should be adequate.

   To overcome the mileage problem a system of bailiffs scattered throughout the county or district could be instituted. Registered mail service, with proper safeguards, could be widely extended or the possibility of using the sheriff's office for the service of division court process could be explored.

2. In the event that the small division courts could not be closed, consideration should be given to leaving clerks on fees and making them pensionable on that basis. There is a precedent for this as registrars of deeds on fees are entitled to contribute to pensions. The following points among others should be considered:

   (1) What of the staff employed in these offices?

   (2) How low would you go on net earnings?

   (3) What of part-time employees?

   (4) What of retirement, as many clerks are well past the normal Civil Service retirement age?

   (5) What of bailiffs and deputy bailiffs? "

In view of certain of those observations this is an appropriate place to deal with two matters which are not dealt with elsewhere in this report. Nor do they essentially relate to division court matters:

(a) Some sheriffs, it seems, have not yet discovered the practicability of having resident part-time bailiffs in various parts of the county or district so that mileage fees may be kept to a reasonable minimum.

(b) Members of the bar seem to have a confidence in the mails, as a means for effecting service, that did not exist a few years ago. Perhaps the limited use of the mails as a regular means of service in summary conviction matters has inclined to establish their reliability.

Both of these matters I regard as important, for the various items of expense involved in litigation can combine to effect a bar to our courts, particularly our small debts courts.

That part of the report included under this sub-heading therefore suggests that, in the interests of the better administration of justice in the small debts courts, consideration be given to a reduction in the number of division courts as circumstances may permit; that in their work with the courts at all levels sheriffs consider the use of resident bailiffs throughout their jurisdictions with a view to minimizing mileage fees, and that the use of the mails as a satisfactory method for the service of process be not overlooked, particularly in any review that may be made of the expense involved in division court procedures.

(4) Judges

In addition to the time which would be available for county and district court work if the county and district court judges were relieved of division court work, there seem to be other reasons that commend such action. There are those who take the view that a judge who tries a claim for a thirty-five dollar grocery bill ought not to be trying personal injury and other claims for substantial amounts. There will, I am sure, be those who will regard it as undesirable that a judge vested with authority to dissolve a marriage should also preside at small debts court. Indeed it is to be observed also that a judge who has an opportunity to specialize in division court work may well develop a facility for the function that is not likely to be acquired by one who sits in division court only occasionally.

There seems no doubt that the power to appoint division court judges is in the province and the proposals I have made for revising the jurisdiction of the division courts are not likely to affect that power. Good results have been obtained by appointing one or two retired judges to hold division court. The appointment of barristers to hold court has in some instances proven satisfactory as well. But the province has reached a stage in its development where it is appropriate to study this matter upon a more long sighted and permanent basis. I find it more appropriate to develop my suggestion under the heading "Juvenile and Family Courts" and accordingly refer you to heading C of this Part.

Ex abundanti cautela, however, I wish to state clearly that I do not regard the appointment of judges to preside in the division courts as being necessarily related to juvenile and family court work. The combination, from some points of view, seems a natural one but conditions throughout the province vary so greatly, particularly as between metropolitan and agricultural areas, that different arrangements will likely be desirable in different sections with, no doubt, a trial and error experience in some instances. I deal elsewhere with the appointment of division court judges in the Toronto area. Discussions had with the county and district judges in other large centres (I have in mind specifically Ottawa, Sudbury and London) indicate that the appointment of such a judge would alleviate much of the work load problem for in each case the heavy volume of division court work - both trial and post-judgment matters - was demonstrated to me. The need or desirability of combining this judicial office with that of juvenile and family court judge in such instances I must leave for the advice of the Inspector of Legal Offices.

Before concluding under this sub-heading, however, I would refer to our early anticipation that it might perhaps be found desirable to vest certain minor civil jurisdiction in the magistrates as is done in some of the other provinces. To state my experience directly it is that I found concerted opposition to any such proposal by the bar and magistrates alike in all parts of the province. Nor, with one or two exceptions, did any of the judges appear to favour it. One lawyer who practices only inactively thought the practice merited study because it appeared to work in Quebec, but he did not have personal knowledge of its operation there.

It was opposed on various grounds when I made enquiry: too many magistrates are not legally trained; to try both civil and criminal issues at the same time with the different principles that apply would lead to great confusion; to try a civil issue before a magistrate who had registered a conviction on the same facts is obviously undesirable; to arrange different magistrates to try the different issues is not feasible in many parts of the province; and finally, the magistrates' system with its logical limitations of jurisdiction works well as it is and this proposal does not seem to fit the scheme.

There was a suggestion made which would likely be useful only in northern Ontario where magistrates have more frequent occasion to visit communities located at a distance from the district seat than do the local judges. It would not involve issues of law. The proposal is to authorize the division court judge to delegate to a magistrate the power to deal with judgment summons and show cause summons matters at places where the magistrate holds court. This is obviously not so much to relieve the judge of work as to afford convenience to the public. I discussed it with a number of the magistrates and found no serious opposition to the proposal.

(5) Post-judgment Processes

I have had many representations made to me with regard to post-judgment processes in the division courts. The consolidation orders, which were introduced a few years ago, seem to render possible a number of abuses under practices presently followed and perhaps this is particularly so in the larger centres.

Several times in various parts of the province, my attention was drawn to the use of the division courts in enforcing claims for the purchase of certain types of articles, which I shall not mention here, but the mention of which became very familiar as my travel through the province progressed and I was told of practices which deprived a defendant of his "normal" defences. Judgments thus obtained are, it seems, invariably pursued with a type of vigour that is not infrequently regarded by the members of the bar with disapproval. This situation has already been referred to in another connection. On more than one occasion I was told by those familiar with the situation of the deliberate augmenting of division court costs after judgment, apparently as a threat to the debtor that the costs, already exorbitant, would become still higher. The division court clerks who presented an excellent and helpful brief described this practice as being, on many occasions, "vindictive".

It was urged upon me in some cases that post-judgment remedies in the division courts should be extended to county, district and Supreme Court judgments or that post-judgment procedures similar to the processes available in the division court should be introduced into the higher courts. On the other hand, some of those appearing before me regarded the recent changes in the law, which permit division court collection facilities to be used in the higher courts in certain circumstances, to be undesirable. Indeed, there were those who felt strongly that the judgment summons process should be abolished entirely. Some were convinced that the present committal provisions in The Division Court Act, which in theory constitute a committal for contempt of court, are in

reality committal for debt and should be abolished; others regarded this as the most effective debt collection machinery in the province and thought it should be extended. One of the most helpful submissions in this regard is the brief filed jointly by the division court clerks of the Metropolitan Toronto area, referred to above.

I digress for a moment to express concern over the fact that in some centres examination of judgment debtors is held in open court. I had always assumed that the type of examination which delves into the personal financial problems of the unfortunate debtor should be conducted with some regard to privacy and I am convinced that such should be the case.

I have reviewed in this very general way the submissions which were made to me in the various parts of the province with regard to the post-judgment aspect of our division court system. And I have demonstrated that it is one of the matters that drew forth different and inconsistent suggestions in various places. Although I have endeavoured to follow the practice of commending to you certain matters which while not strictly within the scope of my assignment seem meritorious in that they represent the common view of a large segment of the bar, I can make no recommendation on these matters for they neither fall within my assigned studies, nor is there uniformity of feeling. However, it does seem that this aspect of division court procedure is deserving of special study by those who are most familiar with it at this time. Some twelve years ago a study involving in part such matters was made by a small committee comprising judges, clerks and practitioners and

resulted in a modest revision of some portions of the act that has proven to be beneficial and worthwhile. In my view the appointment of a similar committee at this time is desirable.

(6) Court Room Accommodation

This is one more matter which, while unrelated in any direct way to the revision of county court jurisdiction appears from several submissions to be demanding of attention. It is not unnatural perhaps that the facilities of the division courts and magistrates' courts, both because of the number involved and the place which they occupy in our court hierarchy, are not infrequently overlooked at the supervisory level of administration. While it is true that the elimination of some of the smaller courts would dispense with certain of the courtroom accommodation problems, the lack of appropriate quarters is by no means limited to the less busy courts. Indeed to a considerable extent it is in some of the busier courts where the need is most apparent if only by reason of the number of members of the public concerned.

Reference has been made to the inadequate premises and facilities by the bar, the clerks and the judges alike. This goes to all aspects of the accommodation in and connected with the courtroom. In some cases it relates to a lack of available premises of a suitable nature; in others to the failure to provide those appointments without which the maintenance of respect for the administration of justice is difficult. Here again it may be that the route to the solution lies in a study being made by the Inspector of Legal Offices who would receive helpful advice from the clerks.

(7) Juries

I have not counted the number of times that the elimination of juries in the division courts was recommended to me. Why the matter should have been raised so often I do not know for very few of such trials are held and generally it was members of the practicing bar who made the proposal. Other than to observe that this mode of trial is used infrequently; that the cost thereof seems out of line with amounts involved in these courts, and that the jury fee payable in every case is regarded as a nuisance tax by lawyers and clerks alike, I can add nothing.

(8) Other Matters

To avoid misunderstanding it is well to point out that this is not to be regarded as a general review of division court practice and procedure. I have dealt with monetary jurisdiction and matters related thereto because of their involvement in the county and district court studies assigned to me. I have discussed also certain matters which the bar apparently regard as important and upon some of which there seems to be general agreement.

C. Juvenile and Family Courts

The growth and development of this system of courts, sporadic as it has been, has now reached a stage where an overall review is in order. Regarded only a few years ago as a sort of "extra court" which took what may be termed a "back seat to the regular courts" the juvenile and family courts are now generally considered to be one of those "regular courts" except in one respect. They are presided over by a judiciary who must in most

cases view their juvenile and family court responsibilities as strictly secondary to those of another appointment or of other work. Eight of our juvenile and family court judges are appointed from among the county court judges; thirty-three are magistrates; of the balance seven are lawyers and eleven are non-lawyers.

That such an arrangement leaves something to be desired in the functioning of some, at least, of the courts was demonstrated to me by example. One of the judges who is also a magistrate finds that his best arrangement is to set aside Fridays for juvenile and family court work. That is all the time he is able to assign to it. But there are so many cases each Friday that he is forced to give an inadequate few minutes to each of as many cases as possible and require parties to return on a later Friday because of his lack of available time. Another such judge, who is also a magistrate, found himself in a like situation. He would not readily relinquish the juvenile and family court work because of the extra remuneration paid him, but felt that it is a difficult task to assign ample time to the work without neglecting his magisterial functions.

In many local communities magistrate's court and juvenile and family court are held on the same day. Under present arrangements it is generally customary for those attending juvenile and family court to sit through the proceedings of the magistrate's court, whatever types of cases may be involved, awaiting the sittings of the juvenile and family court. In several instances correction of this situation was urged. A reversal of the order of the holding of the courts would not be feasible, I was told, because

of the inconvenience to the Crown attorney. Local conditions may to some extent govern available remedies. In any event it appears to be a matter which must of necessity be handled at the local level but there is need for improvement in this arrangement.

It was agreed also that the transition of attitude that is involved on the part of a magistrate where he moves from his magistrate's court to his juvenile and family court is a somewhat difficult one. The juvenile and family court has, not inaccurately I think, been described as a sort of social welfare clinic where solutions are sought and punishment is usually foreign to the consideration involved. The two aspects of the administration of justice, judicial though they both be, are hardly appropriate for vesting in a single judicial officer.

I have already referred to the time demands that juvenile and family court work must of necessity impose upon a magistrate. The difficulty of centrally apportioning the work of a system of provincial magistrates is made more difficult where some have the additional responsibilities of a juvenile and family court judge, particularly where travelling is necessary.

Because of the stature that has been attained by our juvenile and family courts and the part that they play in our society across the province, there are strong reasons for reviewing this situation with a view to establishing a separate judiciary whose appointment would, according to present practices, be within provincial jurisdiction. This view has met with approval at the several meetings where it has been discussed but always I have been urged to recommend that appointments should be confined to those

with legal training for while many of the problems are social rather than legal it is essential to good administration that a judicial officer making an order comprehend its full import as well as his own limitations of jurisdiction. In this view I concur. The dispensing of justice is a function which being essentially judicial, must from time to time require a determination that can only be made by one with legal training. I shall deal below with the introduction of such a system but must first turn to a further suggestion that is related to this proposal.

I have commented upon the desirability of relieving the county and district court judges of some, at least, of their division court duties. The need is particularly pressing in the large urban centres although there are reasons why such a plan should be of general application. And it would tend to make more feasible the establishment of a juvenile and family court bench.

While it is recommended that some of our present division courts be discontinued, there will continue to be a need for the holding of some division courts elsewhere than in the county town. This applies also in the case of juvenile and family courts where the convenience of family groups is to be considered. Nor is the trial of small debt cases so far removed from the responsibilities of the juvenile and family court judge as to render the union in any sense impractical. In short, there is a need for reform in our judicial arrangement in each of these court systems and their union in this sense seems a logical one.

The desirability of appointing lawyers to the juvenile and family court bench is present in no less a degree in the division courts for though they may be regarded as courts of equity and good conscience there can be no doubt that the great majority of the cases coming before them are dealt with upon the basis of the law applicable. Any other course would result in chaos. Accordingly, if my suggestion is adopted, I commend to you the desirability of requiring the appointment of all such judges, other than those now holding office, to be from members of the bar.

It has been pointed out to me by one who is familiar with the functioning of our juvenile and family courts that here a greater portion of the work of the courts is done by administrative staff than in the case of most other courts. The social workers and other specialists who are essential to the successful operation of the court must, if efficiency is to prevail, do what may be termed a "screening process". Not infrequently the result of these preliminary studies is a bringing of the parties together so that the part played by the judge is in many instances a token role if not eliminated altogether. That is the ideal system to be followed in such courts, for simply to bring the parties together in open court in order to determine legal rights would be to defeat the purpose of this important institution. I review this significant feature in order to draw to your attention the opportunity presented for attracting excellent legal personnel to this bench for the <u>modus operandi</u> is such as to permit a judge to be appointed to a comparatively large territorial jurisdiction and thus justify a more substantial salary than might otherwise be the case.

It may also be that if these recommendations are adopted it will be found desirable to transfer to the juvenile and family court bench certain functions of the county and district court judges. Indeed such matters as judicial consent to marriage under section 9(1) of The Marriage Act; adoption orders under section 63 of The Child Welfare Act, and orders relating to the custody, maintenance and guardianship of, and access to, infants under sections 1 and 16 of The Infants Act would appear to be appropriate for such action if there are no constitutional impediments. This would be in line with other proposals of the report relating to the many duties of the county and district court judges.

In a separate Part of this report I deal with aspects of our court systems in the Toronto area for in many respects very special conditions prevail there because of the concentration of population. The situation relating to the juvenile and family courts and the division courts falls into the same category. Suffice to say then that in the Toronto area suggestions appearing above for combining the juvenile and family court work and the division court work in one system of judges would not apply. It is in the Toronto area, however, where the greatest need for division court judges exists.

In other sections of the province circumstances will dictate appropriate action. The process must be a gradual one but gradual processes are often lost in the passing of time when pressed into the background by other matters which emerge and appear more important - and many are inclined to take on a passing

importance only because of their novelty. If this proposal is adopted in principle then I would respectfully suggest that it be made the responsibility of a designated official to see to its introduction across the province as circumstances require and conditions permit.

D. Magistrates

(1) Additional Duties

Observations already made going to the desirability of relieving county and district court judges of work not related to their principal functions apply also, although in lesser degree, to magistrates. Their appointment as juvenile and family court judges is dealt with above. A few engage in labour arbitration work and a number are members of police commissions.

Submissions were received on more than one occasion urging that magistrates should cease to be members of boards of commissioners of police. The principal objection appeared to be the suggestion of conflict that arises where a member of the police force controlled by the commission comes before the magistrate when he is sitting as such. The relationship between the members of the commission and the officer might be described, not inaccurately, as a quasi employer - employee relationship. No further comment is required as to the undesirable situation that this may occasion where a conflict occurs before the magistrate between the testimony of the officer and that of another witness.

(2) Juvenile and Family Courts

The appointment of magistrates to preside at these courts is discussed under heading C of this Part.

(3) Civil Jurisdiction

The uniformity of opposition to the vesting of civil jurisdiction in the magistrates is dealt with above in this Part (Heading B; sub-heading (4)). The feasibility of authorizing magistrates, at the request of the division court judge, to hear and dispose of judgment summons and show cause summons matters is discussed there.

(4) Traffic Courts

Throughout the province there seems to be in the magistrates' courts an attitude that the trial of traffic offences is a branch of the work that is of considerably less importance than the trial of other offences, particularly those under the Criminal Code. This is manifested in different ways: the delegation of the work to deputy magistrates (I do not intend this as a reflection upon this group but simply a noting of the attitude of certain magistrates); the absence of the Crown attorney from traffic prosecutions, and generally an indifference to traffic matters. One magistrate even encourages the police not to bother him with traffic offences. In view of the volume of traffic work disposed of by these courts, the situation is deserving of attention.

From the point of view of the alleged offender who appears in answer to a traffic summons, this work is important. Indeed, since the introduction of the point system many regard it as of even greater importance than previously. From the point of view of the Crown authorities the importance of traffic law enforcement is of major importance. In the continent-wide effort to reduce the toll of life on the highways, leaders in the field are becoming increasingly of the view that the solution lies principally in the field of efficient enforcement.

One of the greatest problems in police administration in traffic law enforcement (and the Ontario Provincial Police Force is certainly no exception) is the matter of maintaining sufficient men on the roads. And one of the principal difficulties in this regard is the time occupied in court.

To provide an example of this type of situation which is discouraging, let me give you as accurately as I can, the description given me by a sergeant of police of many years experience of what he assures me is a typical situation in more than one area of the province: Several police officers are present in court on traffic offence business; some are attending on their "day off". Court opens and the Crown attorney advises the court he will proceed with a criminal matter or matters. He does so and the trial or trials occupy a long period of time. At the conclusion of the criminal trial the Crown attorney leaves the court room: there is inadequate time left for the traffic work to be done; the magistrate is pressed; the alleged offenders and witnesses are tired of waiting; the police officers have spent most of a day in court.

From the enforcement point of view alone there are several unfortunate results: the officers have been required to spend an unreasonable length of time off the road in the court room; they are thereafter inclined to avoid laying charges where charges should be laid; respect for our system of administering justice is not enhanced in the minds of those present in the court room. They are inclined to measure efficiency by that found in industry and this type of operation would not likely be permitted there.

How then can the system be made efficient? Generally the answer is by separate traffic courts, although the specific means of accomplishing this result will vary according to the characteristics of the various courts. In the cities where several magistrates function and several courts are held, the separation is not difficult. And there is much to be said for assigning certain magistrates to traffic work permanently and on the same basis of appointment and salary as those doing other types of magistrate's work. Certainly the attitude presently prevailing in some centres with regard to traffic work is not likely to obtain the best results in traffic prosecutions. It is probably not desirable to complicate our judicial hierarchy by the additional title of "traffic court judge". It is nevertheless feasible, and in my view desirable, to adopt the principle of having, in effect if not by official title, traffic magistrates in those centres where the volume of work and number of magistrates permit.

Where the volume of magistrate's court work is not so great, it is usually possible to separate the traffic work from the criminal work and divide the courts accordingly with a view to the convenience of the public and the availability of police personnel. Where this is not done it is sometimes through oversight; sometimes for other reasons. In one city we found the practice of operating only a morning court, although it not infrequently continued into the afternoon without benefit of luncheon break. The reason given was in some respects a laudable one: the Crown attorney's office was short handed and he wished to conclude the court in order that a legal member of his staff would be available for consultation with officials and members of the public during as much of the afternoon as possible. Such lengthy sessions cannot be regarded, however, as bringing forth the quality of justice that must be sought for.

Whether the absence of legally qualified prosecutors from the traffic courts of the province is attributable entirely to shortage of staff, I cannot say. It would be surprising that the lack of available personnel is of such uniformity across the province. Whether the practice is attributable to a latent departmental policy; a long established understanding among the Crown attorneys, or some reason having to do with the disposition of the fines is not readily discernable with any degree of certainty. Certain it is, in my view, however, that with the exception of those courts which are restricted to the trial of parking violations and the like, the presence of a lawyer-prosecutor in all traffic courts is highly desirable.

This matter was the subject of such submissions to me that I would comment further upon it. The practice of policemen prosecuting for traffic offences is not becoming to our society in this day and age. It is unnecessary to recite the manifest reasons which render discontinuance desirable but it may be observed that they include both the appearance of administering justice and the need for having legally trained personnel perform legal work. The matter has been referred to before and the view seems to have been taken that it is not feasible to man all our magistrates' courts with legally trained prosecutors. It is not unreasonable that courts dealing with non-hazardous offences (principally of the non-moving type) have no need for such a prosecutor. But if the enforcement of our traffic laws is the important matter that necessitates the full time of many police officers in conjunction with the joint efforts of several departments of government towards rendering our highways safer, then the staffing of traffic courts where moving offences are tried with legally trained prosecutors must, in my respectful view, be regarded as logically necessary.

Accordingly I would recommend that consideration should be given to a system of traffic courts to be held by the magistrates separate from their other courts: that wherever feasible these courts be presided over by magistrates assigned exclusively to traffic work, and that arrangements be made to provide them with qualified lawyers as prosecutors.

(5) Co-ordination and Supervision at the Judicial Level

I have already dealt with the lack of facilities in the county courts for supervision and co-ordination of the work of those courts by a senior official at the judicial level. Many of the same observations are applicable in the case of the magistrates although there is direction given to them in certain matters not infringing upon their judicial judgment, by a senior official of the Department. His authority is of course strictly limited, in keeping with the independence that must be maintained in the case of judicial officers.

While I must make it very clear that I do not regard this proposal as being of the same level of importance or urgency as the somewhat similar recommendation relating to county and district court judges, nevertheless there is very good reason to consider the desirability of providing for the supervision and co-ordination of the work of the magistrates by an appointee at the judicial level, if only to ensure a uniformity of practice. I do not suggest however that such would be the limit of the advantages gained.

This is not the first time the suggestion has been made. Whether it has ever been seriously considered I do not know but with the growth in population and the corresponding increase in the volume of magistrate's work, as well as recent observations from the judiciary regarding the necessity for the independence of the magistrates from directions given at the executive level of government, the proposal warrants review at this time.

I do not intend to discuss the matter in further detail but rather to respectfully suggest that consideration be given to a means of supervising and co-ordinating the work of the magistrates at the judicial level.

(6) Night Courts

So frequent were the requests for night courts, particularly in relation to traffic offences, that further study as to their feasibility seems desirable. My only knowledge of their use in Ontario was gained at the Kitchener meeting when Magistrate Mitchell described the Guelph experience. According to the magistrate he and his staff, having instituted a system of night courts which were not sufficiently well attended to warrant their continuance, nevertheless persevered for a period of six months when the lack of apparent usefulness of the courts forced their discontinuance. Whether that is indicative of the situation in communities comparable in size with Guelph I cannot say. It is not unlikely that Mr. Russell will have access to information on the subject from other jurisdictions where such courts are either functioning or have been tested.

PART VII

The Toronto Area

There is a great backlog of trial work in Toronto in both jury and non-jury departments of the Supreme Court and County Court alike. This is manifest from even the most casual study, just as it is clear beyond doubt that the amount of division court work is very substantial and onerous, notwithstanding that the number of York county court judges totals eleven.

Submissions made by members of the bar and confirmed by officials and by "case load" studies over recent years establish a shortage of court rooms, of office space and storage facilities, and of staff at the county court level as well as, apparently, insufficient available judges to handle the work.

In the Supreme Court I cannot comment upon the availability of additional judges and it may be that the lack of court room facilities is a major factor in the fact that the jury list presently (mid-October) stands at approximately 465 untried cases and the non-jury list at 1,330 untried cases as well as a further 949 uncontested divorce cases that are untried. (The non-jury figures, which were substantially higher at the opening of the courts in September, have been reduced by a purging of the lists.) It is unlikely that this situation is entirely attributable to lack of accommodation or indeed to any one factor. Discussions have been carried on for some years by various committees of the bar and members of the High Court bench with a view to remedying this situation. Accordingly, except for comments directed at the county

court situation and which may have application as well to the Supreme Court I will, with two exceptions, direct my attention to the problems of the county court. Some of my observations, with the exception of the pre-trial proposal, may be found to have application elsewhere in the province.

The first exception is a system of pre-trial procedure. This device, which was a creature of necessity, originated in the United States to relieve against overly long court lists. While it may not work in all situations, the fact that it has survived in many areas and is used extensively in certain larger cities vouches for its potential success in certain circumstances and where properly administered.

I refer to it in connection with the Toronto situation because certain of its inherent requirements limit its use to the type of situation here. From the studies of a few years ago when a group of Toronto lawyers made first hand observations in Detroit I may generalize by saying that the system cannot be expected to be successful unless it is conducted by a trial judge of the court and is attended by senior counsel with unlimited authority. Given those factors and the co-operation of the bar, the system has shown that it is capable of affording substantial relief to court backlogs by promoting settlements and reducing the length of trials. And it is not to be overlooked that such accomplishments are desirable also in their side effects of reducing litigation costs.

Whether this device is appropriate for county court levels of jurisdiction I cannot give assurance. I have thought of it only in relation to the Supreme Court when it has been discussed and it may well be that because of the additional hearing involved, brief and informal as it may be, the procedure is less adaptable to courts of secondary jurisdiction.

Secondly, I refer to a proposal that i s not a new one to most lawyers, although I have no knowledge of its application either here or elsewhere. It is the proposal that before an action is set down for trial a certificate be furnished to the effect either that examinations for discovery have been held or that the parties have agreed to dispense with them. (In the light of observations made, the certificate to be furnished in the former alternative should include assurance that the transcripts have been received.) It is unnecessary to explain to judges or registrars who are familiar with the difficulties of arranging lists the reasons for such a proposal and I am sure that the problems aimed at will be equally clear to you. In some quarters examination for discovery is regarded as the stage of the action when settlement should be seriously sought after. Assuming a reasonable proportion of settlements, such a requirement might be expected to free the lists from a considerable number of the cases that are not destined for trial.

Turning to the county court situation, may I first comment that I do not regard the condition of the lists in Toronto as reason for restricting county court jurisdiction if other circumstances dictate that an increase is in order. The problem on the one hand and the question on the other are distinct from each other. Both are important and each warrants appropriate action.

The seriousness of conditions in this court may be demonstrated by figures furnished me but I need mention only that there was a carry over (jury and non-jury) from 1959 to 1960 of 652 cases; from 1960 to 1961 of 1,022 cases, and 1,529 untried cases as of September 29, 1961. Actions set down for the December 4th jury sittings cannot even be given a date for trial until after March 1962 and those set down for the November 6th non-jury sittings cannot be given a date until still later.

There is no short cut to the supplying of physical facilities and clerical staff and it should not be difficult to gauge the extent of the shortages when to-day's volume of work is compared with previous figures; indeed figures presented seem to indicate that the increase in volume in future years may be calculated with what appears to be reasonable certainty.

In the matter of the number of judges required to dispose of the present workload, the answer to the question is not as easily available. The trial picture is complicated by various other functions referred to elsewhere. Nor is it unreasonable to anticipate that under my proposals, if they are carried out, judges from other areas will be available from time to time, for even under present conditions that has occasionally occurred. And it is not to be overlooked that in York county the Masters perform the services that are handled by the local judges in other counties and districts including a large body of mechanics' lien work.

The appointment of two division court judges would go far towards relieving the county court bench of this onerous aspect of its work. Indeed, although it has been suggested that three such judges would be required, helpful information would become available as to county court and division court judicial needs alike if a system of division court judges were initiated by the appointment of two for York county.

Some of those familiar with the situation in York county will regard my view of the need for further judges as unduly conservative and I agree that the recommendations are minimum and dependent upon the result of a trial of the implementation of certain other recommendations. I was impressed also by the reduction of the length of the Toronto non-jury list by the process of purging at the hands of the Chief Justice of the High Court; the registrar assures me that a great many of those cases must be regarded as deadwood and will never be restored to the list.

Summing up the Toronto situation, I must conclude that there is a shortage of court rooms at both court levels; that there is need for additional office space and convenient storage space for the county courts; and that there is, as well, a shortage of clerical staff. Details of my suggestions regarding a system of pre-trial and of restricting the setting down of actions appear above. It is my recommendation that two division court judges be appointed and that, following the implementation of such of these proposals as are adopted, the situation be reviewed in the light of the new experience to determine whether or not there is need for further county court judges.

PART VIII

Concluding Observations

It is my opinion that under present conditions there is likely to be in the not distant future, if there is not now, a need for further county court judges (and perhaps judges of the Supreme Court). Should the principal recommendations and certain of the ancillary proposals contained in this report be implemented it is my opinion that there are now sufficient judges of these courts for the purposes of either the present workload or that which would result from the implementation of the principal recommendations. That is my best opinion and if I am challenged to prove it by statistics I would be at a loss to do so, just as my challenger would find it difficult to obtain reliable and convincing statistics supporting another conclusion.

The view which is expressed above is based upon close and recent observations conducted throughout Ontario under ideal conditions, for as a senior official of your department I was welcomed and given the fullest co-operation and assistance by those members of the bar and of the bench who have regarded the study directed by you as an important one and have made it their business to assist in it. Nor do I overlook the splendid assistance of the local officials of your department in providing statistics as well as helpful advice reflecting the administrative view. And my thinking has been confirmed by such experts in the field with their respective backgrounds of intensive court studies and considerable experience as the two able officials who have held the post of Inspector of Legal Offices during the period of my study.

As stated elsewhere I have attempted to construct this report so that any revisions of practice or organization here suggested will be, as far as possible, within the present framework of our court structure but with certain admitted departures which in my respectful view are unavoidable if improvement is to be effected. It is my opinion that if the system is to be left as it is, then the various monetary jurisdictions should also remain unchanged. Let me explain: So varied are conditions from county to county (and I include the districts in that connotation) that any change in monetary jurisdiction calculated to improve conditions in one segment of Ontario would not unlikely be destined to worsen them in another. The diversification of conditions necessitates a levelling process before any intelligent revision can be contemplated. Unless, for instance, steps are first taken to render present available judicial services readily usable on a flexible basis where required, an increase in county court jurisdiction of sufficient magnitude to serve its intended purpose might increase the workload in certain areas to the point where only the appointment of additional judges would remedy the situation.

However, the vesting in the county and district court judges of divorce and interlocutory jurisdiction in the manner suggested is so important to the convenience of the public in all but two or three counties where special conditions exist, that action in that direction seems desirable in any event although the full benefits to be obtained in this regard will be accomplished in some centres only if the change is accompanied by those revisions which will make possible the additional judicial services that may be required.

In conclusion may I make an observation which is no less applicable to the Supreme Court than to the county and district courts, for it concerns vitally the dispensing of justice and has been brought home to me in the frank discussions that have occurred during this study. When we contemplate the complex procedures of old with the separate systems of courts dispensing common law in the one and equity on the other; the multiplicity of writs, and all the other complexities that cause us to marvel at how our predecessors in the legal profession carried on at all, it is well to recognize that there is still room for improvement. I use "improvement" in the sense of rendering our procedures less complex, less costly, and it seems clear that there are areas where to some degree at least improvement in this aspect of the administration of justice can be accomplished without offsetting disadvantages. To many of us the rules of procedure that distinguish between court and chamber matters appear to follow no rule of logic; the need for a local master as well as a local judge seems in most instances to serve no useful purpose, although each is admittedly appointed by a different authority; the writ of summons with its confusing message in the language of yesterday is regarded by some as virtually serving only the same purposes as the statement of claim; that and certain of the other steps still maintaining in an action are sometimes thought of as only complicating the civil process; and there are other examples which will occur to practitioners and judges where distinctions persist or offices prevail principally because steps have never been taken to exchange the niceties of tradition for the simple and direct approach.

These matters are important for, as has been said, convenience to the lawyer means money saved for the client. When one considers that for the average layman the first fear that stands in the way of seeking justice in the courts is the cost of litigation, it is manifest that each improvement in the process of simplifying procedure renders access to our courts of justice a little less forbidding.

All of which is respectfully submitted.

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